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Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928 29

No. 621 22

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, PETITIONER,

vs.

GUARDIAN TRUST COMPANY, HENRY C. FLOWER, RECEIVER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 10, 1929

CERTIORARI GRANTED FEBRUARY 25, 1929

(33,930)

United States Circuit Court of Appeals

EIGHTH CIRCUIT.

No. 7784

GUARDIAN TRUST COMPANY, HENRY C. FLOWER, RECEIVER, APPELLANT,

vs.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED MARCH 21, 1927.

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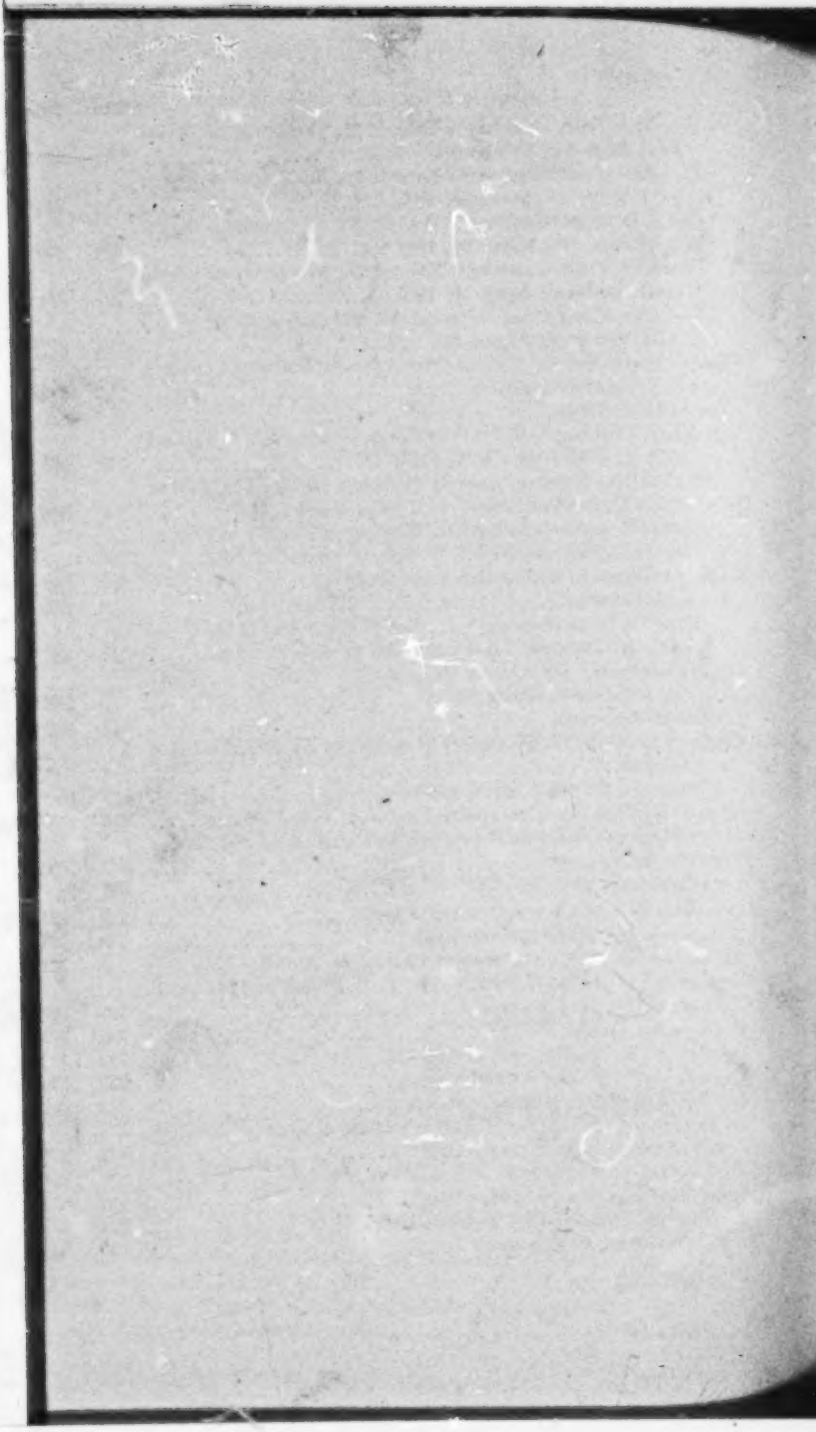

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Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the May Term, 1928, of said Court, before the Honorable Walter H. Sanborn and the Honorable Wilbur F. Booth, Circuit Judges, and the Honorable Thomas C. Munger, District Judge.

Attest: E. E. KOCH,
Clerk of the United States Circuit Court
(Seal) of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the twenty-first day of March, A. D. 1927, a transcript of record pursuant to an appeal allowed by the District Court of the United States for the Western District of Missouri, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein the Guardian Trust Company, Henry C. Flower, Receiver, is Appellant and The Kansas City Southern Railway Company was Appellee, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the May Term, 1928, of said Court, before the Honorable Walter H. Sanborn and the Honorable Wilbur F. Booth, Circuit Judges, and the Honorable Thomas C. Munger, District Judge.

Attest: E. E. KOCH,
Clerk of the United States Circuit Court
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Be it Remembered that heretofore, to-wit: on the twenty-first day of March, A. D. 1927, a transcript of record pursuant to an appeal allowed by the District Court of the United States for the Western District of Missouri, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein the Guardian Trust Company, Henry C. Flower, Receiver, is Appellant and The Kansas City Southern Railway Company was Appellee, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:

a (Order approving stipulation as to transcript of record and printing thereof.)

United States Circuit Court of Appeals, Eighth Circuit.

December Term, 1926.

Tuesday, December 14, 1926.

Guardian Trust Company, Appellant,
No. 7784. vs.
The Kansas City Southern Railway Company.

A stipulation of counsel for the respective parties has been brought to the attention of the Court wherein counsel have agreed as to the preparation of the transcript of the record by the Clerk of the District Court of the United States for the Western District of Missouri on the appeal to this Court, and also as to the printing of said transcript of the record by the Clerk of this Court. On condition that at least five copies of the printed record of the Supreme Court of the United States referred to in the aforesaid stipulation be furnished to the Clerk of this Court prior to the hearing and submission of this appeal, the said stipulation is approved by this Court.

December 14, 1926.

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b (Citation and Acknowledgment of Service.)

In the District Court of the United States for the Western Division of the Western District of Missouri.

Cambria Steel Company, Complainant,
Bill vs. In Equity.
Kansas City Suburban Belt Railroad Company, et al., Defendants.

Edward F. Swinney, as Receiver of the Kansas City Suburban Belt Railroad Company, and Kansas City Suburban Belt Railroad Company, Complainants,
No. 2468 vs. Ancilliary Bill
Cambria Steel Company, et al., Defendants.

The Kansas City Southern Railway Company, Complainant,
vs.
Guardian Trust Company, et al., Defendants.

Intervening Petition.

c United States of America—Set.

To The Kansas City Southern Railway Company, Appellee,—Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, City of St. Louis, Missouri, sixty (60) days from and after the date this citation bears date, pursuant to an appeal filed in the Clerk's Office of the District Court of the United States for the Western Division of the Western District of Missouri, wherein the Guardian Trust Company, Henry C. Flower, Receiver, is appellant and you are appellees, to show cause, if any there be, why the judgment rendered aaginst the said appellant as in said appeal and assignment of errors mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Arba S. Van Valkenburgh, Judge of the Circuit Court of Appeals of the United States, sitting in the Western Division, Western District of Missouri, this 18th day of June, in the Year of Our Lord One Thousand Nine Hundred and Twenty Six.

ARBA S. VAN VALKENBURGH,
Judge.

We hereby acknowledge due service of the within citation this 19th day of June, 1926.

S. W. MOORE,
F. H. MOORE,
A. F. SMITH,
Solicitors for Kansas City Southern Ry. Co.

Endorsed: Filed in U. S. District Court on June 21, 1926.

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1 (Motion of Guardian Trust Company for order on Special Master as to inspection of books and papers, etc.)

In the Circuit Court of the United States for the Western Division of the Western District of Missouri, at Kansas City.

Cambria Steel Company, Complainant,
No. 2468 vs. In Equity.
The Kansas City Suburban Belt Railroad Company, Union Terminal Railroad Company, Kansas City and Independence Air Line, Guardian Trust Company, Missouri Elevator & Terminal Company, Central Improvement Company, Fairmount Amusement Company and Northern Townsite Company, Defendants.

Bill.

Stuart R. Knott, and Edward F. Swinney, as Receivers of the Kansas City Suburban Belt Railroad Company, and Kansas City Suburban Belt Railroad Company, Complainants.

vs.

Cambria Seel Company, Guardian Trust Company and Francis M. Black, its Receiver, Missouri, Elevator & Terminal Company and Wash Adams, its Receiver, Central Improvement Company and Wash Adams, its Receiver, and Fairmount Amusement Company, Defendants.

Ancillary Bill.

Now comes the defendant Guardian Trust Company and shows to the court as follows:

1. On April 1st, 1902, this cause was referred to Shannon C. Douglass, Esquire, as Special Master to take proofs and report the same with his conclusion thereon to this court in connection with the issues of the original cause herein and in connection with the ancillary bill of complainants Knott & Swinney, Receivers, at the earliest practicable date; said order is recorded in Equity Record H. at page 337 and is made a part hereof.

2 2. That on the 6th day of April, 1905, the complainants in the ancillary bill herein filed with the said Special Master a motion that an order be made requiring this defendant to produce before the Master and to permit them to inspect and make a transcript or memorandum of certain books and papers in said motion specified which said motion is hereto attached marked Exhibit "A" and made a part hereof.

3. Thereupon, on the 13th day of May, 1905, this defendand filed with the Special Master its return to the said motion for inspection of books and papers, a copy of which said re-

tion is hereto attached marked Exhibit "B" and is made a part hereof.

4. Thereupon a hearing was had upon said motion and at said hearing it was represented by counsel for the said complainants that such examination as they desired to make of the books and papers of this defendant, if conducted at the office of this defendant would not take more than about a week or ten days, and thereupon the Master announced that he would neither sustain or deny the said motion but that he would treat the same in the nature of a subpoena duces tecum and that he would adjourn the said hearing to the office of the defendant where he would supervise the said examination of said books and papers, and this defendant makes a part hereof, the proceedings upon the said motion before the said Special Master as shown by the transcript of the stenographer employed by the Special Master.

5. Thereupon, at the request of said Special Master counsel for the said complainants furnished to this defendant a list of books and papers and of book entries which they desired to have under paragraph number one of the twenty-five paragraphs of said motion, which said list is hereto attached, marked Exhibit "C" and made a part hereof, and this defend-
ant shows that to have complied merely with the re-
3 quirements made in said list as to said paragraph number one alone, would require the continuous work of the accountant of defendant for a period of not less than four weeks; that the vouchers called for by said list are in some cases more than fifteen years old and are packed away in wooden cases or boxes in a storage vault and are covered with the accumulated dust of years, and are filed away with many hundreds of other vouchers having no application to any matter in controversy and that to have complied with such request would have required that all of said vouchers be gotten from said vault, the reference numbers thereof first obtained, from the books of account, which in itself would have been a long and tedious task, and that after such reference numbers had been obtained, said vouchers themselves would have had to have been assorted and arranged and produced; that all of the vouchers called for relate to transactions transpiring more than ten years before the said ancillary bill was filed and are covered by the plea of the statute of limitations interposed by this defendant to the said bill and that full details of all of said transactions are spread at large upon the books and records of the Kansas City Suburban Belt Railroad Company.

6. That the item of Fifty-six Hundred Dollars ($5600.00) mentioned in paragraph 2 of said motion is not now and never has been in dispute between this defendant and the said complainants and that all the facts and circumstances in relation thereto are fully set forth in the answer of this defendant to the amended and supplemental ancillary bill of complaint of these defendants and there is no occasion for making any examination of any books and papers in regard thereto.

7. Afterward counsel for complainants furnished to this defendant a list of books and papers which it desired
4 to have produced under items three and four and seven of said motion and of questions which it desired to have answered in relation to various matters in said motion set forth, which list is attached hereto marked Exhibit "D", and is made a part hereof.

And this defendant shows that said Johnson after his examination of the books of defendant, prepared certain tabulated statements which have been offered in evidence and which purport to show:

1. All stock of the Belt Company and its constituent companies acquired and disposed of by defendant; the price obtained therefor; consideration paid to said railroad companies, etc.;

2. The same as to bonds of said Belt Company and its constituent companies acquired and disposed of by this defendant;

3. The same as to all commissions received by this defendant from the said railroad company;

4. All profits or losses made by this defendant on stocks or bonds of the said railroad companies acquired from said railroad companies.

5. Also all interest charged by defendant to the Belt and its constituent Co's. Also all fees of defendant's building department.

That in making said statements and tabulations said Johnson examined this defendant's profit and loss account and all of the other accounts which they now seek to re-examine; that complainants are also seeking by said motion to require this defendant to classify and produce all of the vouchers pertaining to each and every item upon the tabulated statements prepared by said Johnson; that many of

said vouchers are already copied in the records herein and that the transactions covered by such tabulated statements of said Johnson took place during a period of more than ten years and were very numerous; that to produce the said vouchers would require this defendant to search through all of the vouchers in its possession relating to transactions during a period of ten years; that while said tabulated statements contain many conclusions and deductions of the said Johnson, and are inaccurate and grossly unfair to this defendant yet said statements show on their face that they were made after an examination of all the books, accounts and vouchers which complainants are now seeking to re-examine.

And defendant shows that examinations have already been made of each and every matter and thing specified in the said motion of complainants and that said examinations have been made not only by the said Johnson and his assistant Mr. Ingals, but also by R. J. McCarty, former auditor in the employ of complainants.

That contained in the record herein are literal copies of thousand of vouchers of this defendant offered in evidence by the complainants and that Volumes three to ten inclusive of the stenographer's transcript of the proceedings before the said Master consist exclusively of said vouchers; that there are three additional volumes of vouchers of said Belt Company and that there are also copied in the record in volvolumes 11 and 12 thereof, about one thousand other vouchers of this defendant, and this defendant shows to the court that each and every voucher or book entry which complainants now seek to have reexamined have already been examined by said Johnson, accountant for the said complainants, and in addition to the said vouchers having been examined by the said Johnson, they have been examined again and again by the counsel of the said complainants, and that as a result of being handled by the various attorneys in this case and having been turned over to the stenographer for copying, the vouchers of this complainant have become mixed with other vouchers and it would be a long and tedious task to separate the said vouchers called for by said motion from other vouchers not pertaining to this case, and that most of the said vouchers so called for are already contained in the record hereof.

8. As to the correspondence called for by the said motion and by the various lists furnished to this defendant by complainants, this defendant shows to the court that from the

year 1889 to the year 1900 and thereafter, this defendant was engaged in a general banking and trust company business; that it conducted operations running into hundreds of thousands of dollars in the sale of stocks and bonds, not only in connection with the said Belt Railroad Company, but in connection with various other persons and corporations; that as an incident to the conduct of a large financial institution it had correspondence of great volume with various persons and corporations, exchanging thousands of letters annually, and that the correspondence which the complainants by said motion seek to inspect took place during a period of more than ten years; that with reference to some of the subjects of correspondence mentioned in said motion, there was correspondence extending throughout the whole of said period of time and that to comply with the said motion would require this defendant to search through an enormous mass of papers in order to ascertain whether such correspondence is in existence; that most of such letters have been either destroyed or placed in storage on account of the lapse of time since the transactions referred to therein took place or else have become lost or misplaced; that unless some more definite description could be given of the papers and correspondence sought for by said motion than is given in said motion and said lists, either by reference to the date or the name of the sender of such letter, it would be a task of months to produce such correspondence even if it existed, and as to whether or not it does exist, complainants cannot state without making search, and that in addition to [look] over all of the let-
7 ters which this defendant has received during said long period of years, it would also be necessary for this defendant to search through all of the letter press impression books in its possession or under its control and that said impression books are more than 300 in number, and that to merely produce and classify and arrange such correspondence would be an interminable task and would put this defendant to great trouble and expense.

9. And the said complainants have given notice that after having made such inspection as they desire to make, they intend to again offer the said Johnson as a witness and to examine him at length in regard to said examination, and this too, in the face of the ruling of the Master that the complainants close their proofs on or before March 15th, 1905, which time has long since expired, thereby again indefinitely postponing the termination of this case.

10. And said complainants seek by said motion not only production of said books and papers, but also the right to

have the said accountant Johnson again go over all the various accounts which he has already gone over in connection with his examination made in the year 1903; that to examine the said accounts in connection with the vouchers pertaining thereto, would consume at least four weeks and the said Master has indicated that he will require this defendant to have somebody in its employ produce the various books and papers which the said Johnson desires to see and from which he desires to make copies; that to comply with the said order would require this defendant to keep an attendant to wait upon the said Johnson and to produce for him as he desires the same, the various books and papers and vouchers which he desires to examine; that this work cannot be done by an ordinary clerk of this defendant but must be done by some person who is thoroughly familiar with all of the books and records of this defendant, thereby causing a great ex-
8 pense to this defendant and great delay in the termination of this case.

11. That it is the obvious purpose of the complainants herein, after the years of time they have consumed in taking testimony in theis case, to now begin at the beginning and go over the same again.

And this defendant shows that all of the evidence heretofore taken by complainants shows that in the case of every entry, debit or credit, made by this defendant on its books in the accounts between this defendant and the various companies parties to this cause, a corresponding entry was made upon the books of such companies, and that in this account, everything that is shown on the books of this defendant is also shown on the books of the said Belt Railroad Company and of the various other companies parties to this suit; that all of said books are now and have ever been in the possession of said Belt Company and its receivers; that accounts were regularly interchanged between this defendant and the said Belt Company and all of the other said companies and that all of said companies, their officers and stockholders, were at all times familiar with all of the transactions of said companies, and were at all times familiar with the disposition made and the price obtained for any stock or bonds sold by them and that the said accounts were checked at various times by the respective auditors of said companies employed for that purpose, and that at least once in each and every month all of the accounts of this defendant and all of the various companies herein named were gone over and checked by the said auditors of the said companies respectively and found to be correct, and this defendant shows that in its

answer herein it pleads as a defense to the original and ancillary bills herein that this defendant has already fully accounted to the said Belt Railroad Company and to the vari-
other companies parties to this cause and that said
9 accounting had been made regularly during a long period of years and at regular intervals and that the officers directors and stockholders in said Belt Company at all times knew the state of said accounts and made no objection to the same and fully acquiesced in the same; that said complainants are estopped from now seeking any further accounting herein; defendant shows that on the 2nd day of February, 1905, it filed with the said Special Master its motion that he make an order requiring that all parties hereto should limit their proofs to the issues made by the pleading as to whether or not the complainant in the original bill and the complainants in the ancillary bill are entitled to have any accounting in this cause and that the said Special Master overruled the said motion; And that upon the hearing of said motion counsel for said Receivers of the Belt Company, Complainants, stated to the Master on the second day of February, 1905, that they expected to have all their testimony in within "a few days", and the said Special Master in overruling said motion, assigned as one of his reasons therefor, the said assurances of the said counsel for complainant that they would be through with their testimony within a few days and that he, the said Master, believed that in view of the said assurances it would result in an earlier termination of this case to allow said counsel to proceed with their proofs than it would if he should sustain the said motion; and defendant makes a part hereof all of the proceedings before the said Special Master upon the said motion as shown by the stenographer's transcript thereof.

12. And defendant objects generally to the said motion for inspection of its books and papers on the following grounds:

(a) Because such inspection will indefinitely prolong and postpone the termination of this case.

(b) Because such inspection and examination will put this defendant to great labor and expense.

10 (c) Because such inspection is unnecessary and will not tend to throw any light upon the issues of this case.

(d) Because such examination has already been made or opportunity given therefor by this defendant.

(e) Because such inspection will be unreasonable and oppressive.

(f) Because the issue made by the pleadings that the said complainants are not entitled to any further accounting should be first determined before putting this defendant to the expense and trouble and delay of such inspection and the testimony which it will elicit.

(g) Because most of the matters sought to be inquired into by such inspection are barred by the statute of limitations and the effect of such plea should be first determined before such inspection is granted.

(h) Because it has been shown by the complainant that all of the matters sought to be inquired into and all the details thereof appear upon the books and records which are now and ever have been in the possession of complainants or of the said Belt Company and that no objection was ever made thereto by the said Belt Company or anyone else whereby the said complainants are now estopped from questioning the same and this issue should be first determined before going on an account to which such inspection is incident.

(j) Because the papers sought to be examined are not described with sufficient particularity to enable this defendant to find the same without great trouble, delay and expense if such papers are now in existence.

(k) Because said motion is a mere search for testimony.

11 (m) Because no sufficient showing has been made that the books and papers sought to be inspected herein, and production of which is asked, are material to this controversy under the issues made by the pleadings herein.

And this defendant shows that among the defenses set up by it in its answer to the original bill herein and to the amended and supplemental ancillary bill herein, is the defense that the complainants have been guilty of laches in the premises; also a plea of the statute of limitations; also a plea of account stated.

And for greater certainty this defendant prays leave to refer to its said answers to said bills.

And defendant shows to the court that if said defenses are sustained by the proof (as defendant contends, they are sustained on complainant's own showing) it will render wholly unnecessary any further examination into the accounts of this defendant and will relieve all parties to the cause of

very great and unnecessary hardship and expense and indefinite delay; that the accounts between this defendant and the said Belt Railroad Company and its constituent companies are exceedingly long and complicated and extend over a period of more than ten years prior to the institution of this suit and that to require this defendant to go into a general accounting in advance of the determination of its said defenses hereinabove mentioned, would result in great waste of time, money and in great delay, and that it is to the interest of all parties to this cause that the said defenses should first be determined before any such general accounting should be sanctioned or prolonged; and if it should be held by the court that the complainants are entitled to an accounting to a limited extent herein, it would be to the interest of all parties to this cause that the court should determine by its preliminary decree to what extent such accounting should be had and the
12 principles upon which such accounting, if any, should be taken.

And in support of this motion for greater certainty, this defendant prays leave to refer to the transcript of the proceedings before said Special Master, which transcript has been made under the directions of said Special Master and also prays leave to refer to the said original bill of complaint and the said ancillary bill of complaint and the said amended and supplemental ancillary bill of complaint and to the answers thereto of this defendant.

Wherefore, this defendant prays that a rule be entered herein that the Master be directed to proceed no further with such inspection of books and papers and that an order be entered herein declaring the proofs of complainants closed.

H. S. MECARTNEY and
J. C. ROSENBERGER,
Solicitors for Guardian Trust Company.

State of Missouri,
County of Jackson—ss.

S. B. Willey, being duly sworn on oath states that he is Secretary of the above named Guardian Trust Company, and that the facts hereinabove set forth are true.

S. B. WILLEY.

Subscribed and sworn to before me a Notary Public within and for the above named County and State on this the 1st day of June, 1905.

My commission expires July 28, 1906.

(Seal) KERSEY COATES REED,
Notary Public.

13 To all parties to above cause and their solicitors:

The above motion will be presented to said court before the Hon. J. F. Philips, Judge, on Wednesday, June 7, 1905, at the Postoffice building in Kansas City, Mo.

J. C. ROSENBERGER,
H. S. MECARTNEY,
Solicitors for Guardian Trust Co.

Copy hereof received June 6, 1905.

S. W. MOORE.

Filed in the Circuit Court of the United States, June 7, 1905.

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14 (Recital of Court with Reference to Motion as to Inspection of Books and Papers, etc.)

June 7th, 1905.

Whereupon, this matter was fully argued before the Honorable John F. Philips, Judge of said United States Court of the Western Division of the Western District of Missouri, —both by counsel for Defendant, Guardian Trust Company and counsel for the Complainants; and thereupon, the Court stated as follows:—

The Court: It seems to me, gentlemen, that this matter in its last analysis is reduced to about this situation: The complainants are asking time from the Special Master in which to introduce further evidence, in the nature of an inspection of the books of the Trust Company, and to have the Trust Company produce their books for that purpose, with the additional statement, when that is concluded,—they want to examine the witness who has examined the books as an expert accountant, and to have him give his statement as to the result of the facts shown by the books. Now, in the very nature of these equity proceedings,—and one of this character,—the Court must necessarily depend largely upon judgment and the discretion and the better personal information of the Master. The whole evidence has been taken before him,—and, its bearing and its relevancy while it is being developed, are all present to his mind. He is familiar with the progress of the case; and, when it is proposed to extend the time in order to take testimony which has been gone into, it is familiar to him,—it is necessarily in his own mind as to the relevancy of it, and

his judgment is to be preferred to that of the Chancellor until the coming in of an examination of the whole testimony. Now, it seems to me that the Master in this case, is the one in whose sound judgment the Court must have confidence. Now, as to how far the Complainants shall be indulged to go into the examination of these books when they are produced, —it would be quite impracticable for the Court, without mere guess-work, to say in advance as to what line the examination should be limited; but, when they are brought before the Master, he can determine at once whether any matter
15 sought to be developed is a mere duplication, and, he can put a stop to it. And, I am going to make this suggestion: I am not going to determine finally upon this motion now. I am going to let the motion stand. Nor, will the Court make any written order to the Master as to the further taking of time,—further than to suggest to the master, that it is very desirable on all sides, and especially by the Court, that there should be an end to the taking of testimony in this case, and, that it should be expedited as much as possible. With the statement by Mr. Moore, that this line of proof which he proposes to develop or pursue can be accomplished in a short time,—I will leave this motion pending before the Court, with the statement of counsel, with the limit to the end of this month; and if the examination has not been accomplished by that time, then you can bring the motion up before the Court, and the Court can determine at that time whether to take control of the case in that direction. I take it, with these suggestions, that the Master will expedite the hearing as much as possible. I am not going to stop it at this time; but, if it is a duplication, the cost of it will be taxed against the Complainants,—so that the Respondent in this case will suffer no hardship in that regard. If the testimony is incompetent and irrelevant, it will be passed upon by the Master. Of course, the Master will only pass upon it in summing up the case.

Mr. Rosenberger: If the Court please, there is one matter that I bring up at the suggestion of the Master. This is a matter which is involved in this motion,—which, I understand has been disposed of, as just indicated by the Court. I think I am serving the desire of the Master in bringing this matter up now. Included in this motion is a specification that all of the correspondence of the Trust Company with all these various subsidiary companies, upon certain subjects, be produced:—and, that all of the correspondence of the
16 Trust Company with certain agents be produced. As to that feature, the application filed and which Your

Honor has taken under advisement, makes a showing; and, the question arises as to what extent it shall be complied with.

Mr. Moore: That is to be determined by the Master.

Mr. Rosenberger: I would like for the Court to determine it.

The Court: The Master can determine that. He is the Alter ego of the Court, and is to determine that when you produce the letters. You can bring them in, and he can determine that question.

Mr. Rosenberger: The Master has not indicated what his ruling will be in that respect.

The Master: I have said, in several instances,—that I will not permit a general examination and inspection of all the correspondence; and, I have said that I would only permit an examination of such matters as I think are relevant.

The Court: There being no other line of demarcation,—and the correspondence not being before the Court,—the Court cannot pass on that question now. You can bring the correspondence called for by the order, in the nature of a subpoena duces tecum; and, the Master can determine what you can do about that in advance,—otherwise, it leaves the matter wholly in you to determine.

Mr. Rosenberger: I only wanted to save the Master any embarrassment.

The Court: You can get along best by presenting these matters before the Master; but, you will create delay by resisting a full examination of the records in your possession.

Mr. Rosenberger: We are not doing that.

(After examination by Master)

The Court: This all shows the necessity of the Chancellor leaving these matters in the sound discretion of the Master; otherwise, he may interrupt the case without sufficient knowledge or information. (pp. 28269, 28270, 28271, and 28272, Douglass Transcript.)

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17 "Saturday, February 4, 1905, ten o'clock a. m. (p. 8416 Douglass Transcript .....)"

Mr. Rosenberger: I move the Master,—he having ruled that under the circumstances there shall be an accounting in

this case, that if there be an accounting, the Master require the Complainants and Cross-Complainants to sur-charge and falsify the debtor and creditor account of the Guardian Trust Company, as presented by the Complainants' witness, Mr. Willey. In other words,—I move that the Master require the adverse parties to specify the items of this long and complicated account which are in dispute here. If the Master is not prepared to rule on that motion, now, I would like to hand him some authorities—I would like to hand him Mr. Moore's brief on the subject.

The Master: I will not rule on it today.

Mr. Rosenberger: I will broaden the motion to this extent: That the Complainants and Cross-Complainants be required to specify the items in the accounts between the Guardian Trust Company and the other parties to this case, which are in dispute here, whether they appear on Mr. Willey's statement or not.

Mr. Moore: It is my present expectation to file an Amended Bill, sur-charging and falsifying; and, to do this at the request of the defendant Guardian Trust Company, in response to its motion.

The Master:—I will not pass on the motion, for the present.

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18 (Motion of Guardian Trust Company, et al., for Final Decree.)

In the District Court of the United States for the Western Division of the Western District of Missouri.

Cambria Steel Company, Complainant,

vs.

Kansas City Suburban Belt Railroad Company, The Union Terminal Railroad Company, Kansas City & Independence Air Line, Guardian Trust Company, Missouri Elevator & Terminal Company, Central Improvement Company, Second Street Improvement Company, Fairmount Amusement Company, and Northern Townsite Company, Defendants.

Bill in Equity.

Edward F. Swinney, as Receiver of The Kansas City Suburban Belt Railroad Company, and Kansas City Suburban Belt Railroad Company, Complainants,

No. 2468. vs.

Cambria Steel Company, Guardian Trust Company, Missouri Elevator & Terminal Company, Central Improvement Company and T. T. Crittenden, its Receiver, Northern Townsite Company, and Fairmount Amusement Company, Defendants.

Ancillary Bill.

The Kansas City Southern Railway Company, Complainant,

vs.

Guardian Trust Company, Kansas City Suburban Belt Railroad Company and Edward F. Swinney, as Receiver of the Kansas City Suburban Belt Railroad Company, Central Improvement Company and T. T. Crittenden, its Receiver, Cambria Steel Company, Northern Townsite Company and its Receiver, Fairmount Amusement Company, and Missouri Elevator & Terminal Company, Defendants.

Intervening Petition.

Now comes the Guardian Trust Company and Henry C. Flower, its Receiver, and move the court to enter final decree in the above entitled cause in accordance with the directions given to this court by the decree of the United States Circuit Court of Appeals for the Eighth Circuit, pursuant to the opinion filed by said Court of Appeals December 2, 1913, and in accordance with the mandate of the Supreme Court of the United States filed in this court and cause on April 18, 1916; and your petitioners will ever pray.

GUARDIAN TRUST COMPANY and
HENRY C. FLOWERS, Its Receiver,
By J. D. Bowersock,
J. C. Rosenberger,
Their Solicitors.

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19 Notice.

To the above named Kansas City Southern Railway Company, Cambria Steel Company, Kansas City Suburban Belt Railroad Company, Union Terminal Railroad Company, Kansas City &

Independence Air Line, Missouri Elevator & Terminal Company, Central Improvement Company, Second Street Improvement Company, Fairmount Amusement Company, and Northern Townsite Company, or their Solicitors:

Please take notice that the Guardian Trust Company and Henry C. Flower, its Receiver, will bring the foregoing motion on for hearing in the United States District Court for the Western Division of the Western District of Missouri, at Kansas City, before Hon. A. S. Van Valkenburgh, Judge thereof, at his chambers in the Postoffice Building, on Monday, the 30th day of October 1922, at ten o'clock a. m. or as soon thereafter as counsel can be heard.

GUARDIAN TRUST COMPANY
and HENRY C. FLOWER,
Its Receiver,
By J. D. Bowersock,
J. C. Rosenberger,
Their Solicitors.

Received copy hereof this 3rd day of October, 1922.

CYRUS CRANE,
A. F. SMITH,
Solicitors for Kansas City Southern Railway Company, Kansas City Suburban Belt Railroad Company, Union Terminal Railroad Company, Kansas City & Independence Air Line, Central Improvement Company, and Fairmount Amusement Company.

.....
Solicitors for Cambria Steel Company

.....
Solicitors for Northern Townsite Company.

.....
Solicitors for Second Street Improvement Company.

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20 Affidavit.

State of Missouri
County of Jackson—ss.

J. C. Rosenberger, being duly sworn, on oath states that he is one of the solicitors for the Gardian Trust Company and Henry C. Flower, its Receiver, and as such he, on October 3, 1922, served the annexed motion and notice on Mr. Frank Hagerman, Solicitor of record of Cambria Steel Company by delivering a true copy of said motion and notice at the office of said Frank Hagerman, Kansas City, Missouri, to Henry L. Jost, Esq., of the law firm of Hagerman & Jost.

Affiant further states that on this 4th day of October, 1922, he duly mailed a copy of the annexed motion and notice, together with a letter, of which copy is hereto annexed, all enclosed in a sealed envelope addressed to Cambria Steel Company at its main office, Widener Building, Philadelphia, Pennsylvania, by registered, United States mail, postage prepaid.

Further affiant saith not.

J. C. ROSENBERGER

Subscribed and sworn to before me this 4th day of October, 1922.

My commission expires June 11, 1925.

ROLLIE E. TALBERT
(Seal) Notary Public in and for Jackson County, Missouri.

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21 Copy

October 4, 1922.

Cambria Steel Company,
Widener Building,
Philadelphia, Pennsylvania.

For Attention your President and General Counsel.

Cambria Steel Co., Complainant,
Cause No. 2468 vs.
Kansas City Suburban Belt Railroad Co. Et Al., Defendants.

In the United States District Court at Kansas City, Mo.

Gentlemen:

There is enclosed herewith copy of a motion of the Guardian Trust Company and H. C. Flower, its Receiver, for

final decree in the above cause, in which you on September 6, 1900, filed your bill of complaint. Annexed thereto is a copy of notice served on counsel for the Kansas City Southern Railway Company and others that said motion will be brought on for hearing before the Judge of said court at ten o'clock a. m. October 30, 1922.

Copy of this motion and notice were left yesterday at the office of Mr. Frank Hagerman, your attorney of record, but he is out of the city, and to make sure that you will have notice we are sending copy to you also. The case grows out of the receivership of the Kansas City Suburban Belt Railroad Company, its reorganization, and its acquisition by the Kansas City Southern Railway Company in reorganization.

This is sent to you by registered mail.

Yours very truly,
J. D. BOWERSOCK
J. C. ROSENBERGER.
Attorney for Guardian Trust Co.
and H. C. Flower, Its Receiver.

Enc-2

Filed in the District Court of the United States October 4, 1922.

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22 Order Appointing Special Master, Etc.

In the District Court of the United States for the Western Division of the Western District of Missouri.

Cambria Steel Company, Complainant,
vs. In Equity
Kansas City Suburban Belt Railroad Company, Et Al., Defendants.

Bill

Edward F. Swinney, as Receiver of the Kansas City Suburban Belt Railroad Company, and Kansas City Suburban Belt Railroad Company, Complainants.
No. 2468 vs.
Cambria Steel Company, Et Al., Defendants.

Ancillary Bill

The Kansas City Southern Railway Company, Complainant,
vs.
Guardian Trust Company. Et Al., Defendants.

Intervening Petition.

This cause having heretofore come on to be heard on motion of defendant Guardian Trust Company and Henry C. Flower, its Receiver, for the entering of a final decree in the above entitled cause, in accordance with the directions given to this court by decree of the United States Circuit Court of Appeals for the Eighth Circuit pursuant to the opinion filed by said Court of Appeals December 2, 1913, and in accordance with the mandate of the Supreme Court of the United States affirming said decree; and upon the motion of said Trust Company and its Receiver that said final decree shall allow and adjudge, in favor of the Guardian Trust Company, against the Kansas City Southern Railway Company and Cambria Steel Company, its costs and expense of litigation hereinafter mentioned; and upon the supplemental petition of Charles B. Shedd and Chas. Cossitt Shedd, et al., Executors of the last will and testament of Edward A. Shedd, deceased, directed to the same end; and upon the motion of the Kansas City Southern Railway Company to dismiss last mentioned petition; and it having been shown to the court that due notice of said hearing has been duly given by the Guardian Trust Company and its Receiver to all of
23 said parties and to Cambria Steel Company; the Guardian Trust Company and its Receiver appearing by Messrs. J. C. Rosenberger and J. D. Bowersock, their solicitors; the Kansas City Southern Railway Company appearing by Messrs. Cyrus W. Crane, A. F. Smith, and F. H. Moore; said Executors and Charles B. Shedd appearing by Messrs. Chas. M. Bush, Harry S. Mecartney, and Edmond J. Reynolds; and the court having heard the arguments of counsel and having taken the above matters under advisement upon briefs furnished by the respective parties, and the court, being duly advised in the premises, having on June 20th, 1923, filed its memorandum opinion touching said motion of Kansas City Southern Railway Company and touching the rules and principles upon which the final decree to be entered herein shall allow and adjudge the recovery by the Guardian Trust Company of certain costs and expenses of litigation of the Guardian Trust Company;

Now, therefore, it is ordered:

(1) That said motion of the Kansas City Southern Railway Company to dismiss the said supplemental petition of the said Executors and Charles B. Shedd be and the same is hereby sustained, and said petition is dismissed.

(2) That puruant to said memorandum opinion filed, the Hon. Henry D. Ashley is hereby appointed Special Master, to ascertain, take, and state an itemized account of all cost and expenses paid or incurred by the Guardian Trust Company or its various Receivers for and on account of court costs and other expenses incurred by said Trust Company and its Receivers in and about its resistance of and defense against this litigation, and in defending against the various original and dependent bills and petitions filed herein against the Guardian Trust Company or its Receiver, by or at the instance of Kansas City Southern Railway company, Cambria Steel Company, Kansas City Suburban Belt Railroad Company or its Receivers, or its subsidiary companies or their Receivers, parties to this cause, and in defending, maintaining, protecting, and preserving therein the right,
24 equity, title, and lien of the Guardian Trust Company of its Receivers as pledgee of the property described in paragraph V. of the former decree of June, 1910, or in the property of any corporation whose stock was so held in such pledge, and the right to dispose of and realize upon said pledged property in accordance with the terms of the pledges under which said property was pledged, including, among other expenses, those for attorneys' fees, counsel or solicitors' fees, stenographers' fees, expert accountants' fees, printing fees, traveling expenses, and other expenses incurred in the premises; and said Master is ordered to state said account in accordance with the findings, rules, and principals set forth in said memorandum opinion of this court. It is ordered that within a time to be fixed by said Master the Guardian Trust Company and its Receiver shall file with said Master its claim or demand, in the form of a debtor and creditor statement, for reimbursement for and on account of said costs and expenses, and that when so filed said Master shall hear and determine the same, subject to the approval of this court, and shall make his report thereon to this court with all convenient speed.

Ordered further: That in stating said account said Special Master shall set out the taxable court costs as between

party and party separately from the other expenses of the Guardian Trust Company hereinabove mentioned.

Ordered further: That pending the ascertainment by said Special Master of the amount of said costs and expenses, and the filing of his report as aforesaid, the matter of the form of the final decree to be entered herein is taken under further advisement.

Done this 25th day of June, 1923.

ARBA S. VAN VALKENBURGH
Judge.

Filed in the District Court of the United States June 25th, 1923.

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25 (Motion of Kansas City Southern Railway Co. to set aside order appointing Special Master.)

The Kansas City Southern Railway Company moves the court to set aside the ruling and order of the court herein, dated June 25, 1923, appointing a Master herein for the purpose of ascertaining the costs and expenses incurred by the Guardian Trust Company, and its receiver, in this litigation for the following reasons:

1. The court erred in its refusal to find that the Cambria Steel Company and The Kansas City Southern Railway Company were not liable for any costs or expenses paid or incurred by the Guardian Trust Company, or any of its receivers, for or on account of any expenses incurred by said Trust Company and its receivers in and about this litigation or any of the proceedings in reference thereto
26 other than the items of court costs fixed by statute.

2. The court erred in appointing a Master and authorizing him to take account of any costs or expenses paid or incurred by the Guardian Trust Company other than the costs regulated by statute.

3. The court erred in directing the Master to take an account of the expenses, or any of them, of the Guardian Trust Company, or any of its receivers, for attorneys' fees, counsel or solicitors' fees, stenographer' fees, expert accountants' fees, printing fees, traveling expense or other expenses incurred in this litigation other than court costs fixed by statute.

4. The court erred in its conclusion that the Circuit Court of appeals found that there was a plan formed by the guiding

and controlling powers of The Kansas City Southern Railway Company to despoil the Trust Company of its property or to deprive it of moneys due it from the Belt Company, or to recover a judgment over against it for a very large sum of money, unless it was legally entitled thereto.

5. The court erred in its intimation that this litigation was not instituted in good faith and on reasonable grounds.

6. The court erred in its conclusion that the appellate court has found that this litigation was wholly baseless and unwarranted.

7. The court erred in its conclusion that the foundation of this litigation was the charge that the Guardian Trust Company was liable because of its misconduct as trustee of an express trust.

8. The court erred in its conclusion that if a trustee is charged in legal proceeding with misconduct the party making the charge must pay all of the expenses or costs of the trustee in such litigation in case the charges are not sustained, however substantial and reasonable may be the grounds for making such charges.

9. The court erred in its conclusion that the Court of Appeals found that the charges made by the Cambria
27 Steel Company and The Kansas City Southern Railway Company were without reasonable foundation. The evidence on which such charges were made was not before the Court of Appeals. The report of the Master shows that there was substantial ground and reasonable cause for such charges.

10. The court erred in directing the Master to ascertain and report all of the costs and expenses incurred by the Guardian Trust Company and its receivers in this litigation without regard to the issues upon which such expenses were incurred, and without discriminating between those issues upon which expenses must have been incurred in determining the controversies that must have been determined betwen th parties to this litigation, as distinguished from those issues upon which expenses, if any, might have been incurred in defending against charges of misconduct, if any, on the part of the Guardian Trust Company.

11. The court erred in its conclusion that the Trust Company is entitled to an allowance on the theory on which allowances are made to a trustee for protecting a trust fund in its possession. The only fund that could in any wise be said

to be involved in this case was property on which the Trust Company claimed to have a lien superior to the claim of the Kansas City Southern Railway Company thereto, which lien it was seeking to enforce for its own benefit only, against said Railway Company.

12. The court erred in its conclusion that the Guardian Trust Company did not initiate this litigation. The controversy was the outcome of a long course of dealing of which there were reasonable grounds for asking an accounting; and this immediate litigation followed immediately upon the notice of the Trust Company that it would sell certain collateral securities upon which it claimed a lien superior to that of The Kansas City Southern Railway Company, and which sale would take from the creditors of the Kansas City Suburban Belt Railroad Company all of the assets of that company, leaving all other creditors of that company without any assets out of which to realize their claims; and which preference was acquired by the Guardian Trust Company when the said Kansas City Suburban Belt Railroad Company was insolvent.

28 13. The court erred in its conclusion that this litigation involved the conduct of trust estates and the disposition of securities and funds pledged and held in trust. The status of the Trust Company in reference to its conduct as to the securities and funds in question involved in such charges was that of a promoter, and not of an express trustee.

14. If punitive costs or costs as between solicitor and client can be taxed in a case of this kind the court erred in its conclusion that it is unecessary to take any evidence or any new issues in reference thereto. If any such costs are taxable it must be on the ground that the charges authorizing the taxation of such costs were made without foundation and in bad faith. There has been no trial of any such issue, and the evidence would not establish any such fact. On the contrary, the evidence would establish that the suits were brought in good faith and on reasonable grounds.

15. This court's action is contrary to the order and direction of the Circuit Court of Appeals in this case which was stated, in its opinion (210 Fed. 722-723,) as follows:

Counsel for three of the stockholders of the Trust Company have been heard upon their petition that this court adjudge that certain of the litigation herein instituted by the Cambria Company, the Belt Company, and the Southern

Company was commenced and prosecuted in bad faith, and that it direct the court below to find the amount of attorneys' fees, stenographers' fees, and expert accountants' fees necessarily incurred by the Trust Company in that litigation and, after the entry of the main decree, to render a further decree in favor of the Trust Company and against the Southern Company for the aggregate of these amounts, or that this court direct the court below to insert in its decree an adjudication that it is rendered without prejudice to the right of the Trust Company to sue the Southern Company for those sums, that this court also direct the court below to include in the costs herein the damages, costs, fees, and expenses incurred by the Trust Company in the injunction suit reported in Guardian Trust Co. vs. Kansas City Southern Ry. Co., 171 Fed. 43, 96 C. C. A. 285, 28 L. R. A. (N. S.) 620, and also to insert in the decree an adjudication that the decree shall not prejudice the right of the Trust Company to move for such damages, costs, fees, and expenses in the injunction suit reported in Guardian Trust Co. vs. Kansas City Southern Ry. Co., 146 Fed. 337, 76 C. C. A. 615. A deliberate consideration of this petition and of the exhaustive arguments of counsel have, however, persuaded that inasmuch as
29 the questions suggested came for the first time into this suit at the rehearing in this court, as no evidence has been taken relative to them, and as the evidence upon the issues tried in this case was not brought to this court, it would be unwise and might be unjust to adjudicate the questions presented by the petition of these stockholders. Moreover, as this court cannot rightly determine the questions relating to the costs to be taxed at this time, as there are established rules of practice concerning them, and as directions to the court below to open and try new issues might, and probably would, prolong this litigation through several years more, our conclusion is that our just course is to leave the taxation of costs to the court below under the principles, rules, and practice in equity.

16. The court erred in refusing to hold that the guardian Trust Company was sued upon its individual liability and not as a trustee of an express trust.

17. The court erred in refusing to hold that the Guardian Trust Company was suing to recover a debt due it upon its individual liability and therefore has no right, in any event, to extraordinary costs.

18. The court erred in refusing to hold that the Trust Company was suing to recover a debt due to it individually

and therefore has no right, in any event, to extraordinary costs.

19. The court erred in refusing to hold that the purpose of the Trust Company in this litigation was to establish its debts against the Kansas City Suburban Belt Railroad Company and to establish the liability of The Kansas City Southern Railway Company as a constructive trustee because of its ownership of the property of the Kansas City Suburban Belt Railroad Company; and the Court erred in refusing to hold that the purpose of the complainants in this litigation was to establish the liability of the Guardian Trust Company as a constructive trustee; and the court erred in refusing to hold that in such circumstances neither of the parties was entitled to anything more than ordinary costs.

20. The court erred in refusing to hold that the Guardian Trust Company was personally interested in this litigation and therefore it was not entitled to any allowances even if there had been a trust fund out of which such allowances could be made.

21. The court erred in refusing to hold that there was no trust fund in this case out of which any allowances could be made or on account of which any extraordinary costs could be taxed.

F. H. MOORE
CYRUS CRANE
A. F. SMITH
Attorneys for The Kansas City Southern Railway Company.

Filed in the District Court of the United States Sept. 22, 1923.

(Exceptions of Kansas City Southern Railway Company to order appointing Special Master.)

The Kansas City Southern Railway Company excepts to the ruling and order of the court herein dated June 25, 1923, and to the opinion of the court handed down on June 20th, 1923, upon which said order was based, for the following reasons:

1. The court erred in its refusal to find that the Cambria Steel Company and The Kansas City Southern Railway Company were not liable for any costs or expenses paid or incurred by the Guardian Trust Company, or any of its receivers, for or on account of any expenses incurred by said Trust Company and its receivers in and about this litigation or

any of the proceedings in reference thereto other than
32 the items of court costs fixed by statute.

2. The court erred in appointing a Master and authorizing him to take account of any costs or expenses paid or incurred by the Guardian Trust Company other than the costs regulated by statute.

3. The court erred in directing the Master to take an account of the expenses, or any of them, of the Guardian Trust Company, or any of its receivers, for attorney's fees, counsel or solicitor's fees, stenographer's fees, expert accountants' fees, printing fees, traveling expenses or other expenses incurred in this litigation other than court costs fixed by statute.

4. The court erred in its conclusion that the Circuit Court of Appeals found that there was a plan formed by the guiding and controlling powers of The Kansas City Southern Railway Company to despoil the Trust Company of its property or to deprive it of moneys due it from the Belt Company, or to recover a judgment over against it for a very large sum of money, unless it was legally entitled thereto.

5. The court erred in its intimation that this litigation was not instituted in good faith and on reasonable grounds.

6. The court erred in its conclusion that the appellate court has found that this litigation was wholly baseless and unwarranted.

7. The court erred in its conclusion that the foundation of this litigation was the charge that the Guardian Trust Company was liable because of its misconduct as trustee of an express trust.

8. The court erred in its conclusion that if a trustee is charged in legal proceedings with misconduct the party making the charge must pay all of the expenses or costs of the trustee in such litigation in case the charges are not sustained, however substantial and reasonable may be the grounds for making such charges.

9. The court erred in its conclusion that the Court of Appeals found that the charges make by the Cambria
33 Steel Company and The Kansas City Southern Railway Company were without reasonable foundation. The evidence on which such charges were made was not before the Court of Appeals. The report of the Master shows that there was substantial ground and reasonable cause for such charges.

10. The court erred in directing the Master to ascertain and report all of the costs and expenses incurred by the Guardian Trust Company and its receivers in this litigation without regard to the issues upon which such expenses were incurred, and without discriminating between those issues upon which expenses must have been incurred in determining the controversies that must have been determined between the parties to this litigation, as distinguished from those issues upon which expenses, if any, might have been incurred in defending against charges of misconduct, if any, on the part of the Guardian Trust Company.

11. The court erred in its conclusion that the Trust Company is entitled to an allowance on the theory on which allowances are made to a trustee for protecting a trust fund in its possession. The only fund that could in any wise be said to be involved in this case was property on which the Trust Company claimed to have a lien superior to the claim of The Kansas City Southern Railway Company thereto, which lien it was seeking to enforce for its own benefit only, against said Railway Company.

12. The court erred in its conclusion that the Guardian Trust Company did not initiate this litigation. The controversy was the outcome of a long course of dealing of which there were reasonable grounds for asking an accounting; and this immediate litigation followed immediately upon the notice of the trust company that it would sell certain collateral securities upon which it claimed a lien superior to that of The Kansas City Southern Railway Company, and which sale would take from the creditors of the Kansas City Suburban Belt Railroad Company all of the assets of that company, leaving all other creditors of that company without any assets out of which to realize their claims; and which preference was acquired by the Guardian Trust Company when the said Kansas City Suburban Belt Railroad Company was insolvent.

34 13. The court erred in its conclusion that this litigation involved the conduct of trust estates and the disposition of securities and funds pledged and held in trust. The status of the Trust Company in reference to its conduct as to the securities and funds in question involved in such charges was that of a promoter, and not of an express trustee.

14. If punitive costs or costs as between solicitor and client can be taxed in a case of this kind the court erred in its conclusion that it is unnecessary to take any evidence or try

any new issue in reference thereto. If any such costs are taxable it must be on the ground that the charges authorizing the taxation of such costs were [make] without foundation and in bad faith. There has been no trial of any such issue, and the evidence would not establish any such fact. On the contrary, the evidence would establish that the suits were brought in good faith and on reasonable grounds.

15. This court's action is contrary to the order and direction of the Circuit Court of Appeals in this case which was stated, in its opinion (210 Fed. 722-723), as follows:

Counsel for three of the stockholders of the Trust Company have been heard upon their petition that this court adjudge that certain of the litigation herein instituted by the Cambria Company, the Belt Company, and the Southern Company was commenced and prosecuted in bad faith, and that it direct the court below to find the amount of attorneys' fees, stenographers' fees, and expert accountants' fees necessarily incurred by the Trust Company in that litigation, and, after the entry of the main decree, to render a further decree in favor of the Trust Company and against the Southern Company for the aggregate of these amounts, or that this court direct the court below to insert in its decree an adjudication that it is rendered without prejudice to the right of the Trust Company to sue the Southern Company for those sums, that this court also direct the court below to include in the costs herein the damages, costs, fees, and expenses incurred by the Trust Company in the injunction suit reported in Guardian Trust Co. vs. Kansas City Southern Ry. Co., 171 Fed. 43, 96 C. C. A. 285, 28 L. R. A. (N. S.) 620, and also to insert in the decree an adjudication that the decree shall not prejudice the right of the Trust Company to move for such damages, costs, fees, and expenses in the injunction suit reported in Guardian Trust Co. vs. Kansas City Southern Ry. Co., 146 Fed. 337, 76 C. C. A. 615. A deliberate consideration of this petition and of the exhaustive arguments
of counsel have, however, persuaded that inasmuch as
35 the questions suggested came for the first time into this suit at the rehearing in this court, as no evidence has been taken relative to them, and as the evidence upon the issues tried in this case was not brought to this court, it would be unwise and might be unjust to adjudicate the questions presented by the petition of these stockholders. Moreover, as this court cannot rightly determine the questions relating to the costs to be taxed at this time, as there

are established rules of practice concerning them, and as directions to the court below to open and try new issues might, and probably would, prolong this litigation through several years more, our conclusion is that our just course is to leave the taxation of costs to the court below under the principles, rules, and practice in equity.

16. The court erred in refusing to hold that the Guardian Trust Company was sued upon its individual liability and not as a trustee of an express trust.

17. The court erred in refusing to hold that the Guardian Trust Company was suing to recover a debt due it upon its individual liability and therefore has no right, in any event, to extraordinary costs.

18. The court erred in refusing to hold that the Trust Company was suing to recover a debt due to it individually and therefore has no right, in any event, to extraordinary costs.

19. The court erred in refusing to hold that the purpose of the Trust Company in this litigation was to establish its debts against the Kansas City Suburban Belt Railroad Company and to establish the liability of The Kansas City Southern Railway Company as a constructive trustee because of its ownership of the property of the Kansas City Suburban Belt Railroad Company; and the Court erred in refusing to hold that the purpose of the complainants in this litigation was to establish the liability of the Guardian Trust Company as a constructive trustee; and the court erred in refusing to hold that in such circumstances neither of the parties was entitled to anything more than ordinary costs.

20. The court erred in refusing to hold that the Guardian Trust Company was personally interested in this litigation and therefore it was not entitled to any allowances
36 even if there had been a trust fund out of which such allowances could be made.

21. The court erred in refusing to hold that there was no trust fund in this case out of which any allowances could be made or on account of which any extraordinary costs could be taxed.

F. H. MOORE
CYRUS CRANE
A. F. SMITH
Attorneys for The Kansas City Southern Railway Company.

Filed in the District Court of the United States September 22, 1923.

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37 (Motion of Kansas City Southern Railway Company to require Guardian Trust Company to file Petition setting forth its claim for costs, etc.)

Now comes The Kansas City Southern Railway Company and without waiving and still insisting on its exceptions and claim that the court has committed error in entering into an inquiry as to anything but ordinary costs, moves the court to require the Guardian Trust Company to file its petition herein setting forth specifically and clearly the ground or grounds upon which it bases its claim for extraordinary or punitive costs, or costs as between solicitor and client, or costs other than those ordinarily taxable, or costs other than those fixed by statute, and specifying how much of such costs or expenses are claimed against The Kansas City Southern Railway Company or the Cambria Steel Company, or either of them, on account of each of the various charges of bad
38 faith, if any, or other grounds, if any, and in what bills, cross bills, petitions or intervening petitions they are contained, and how much was expended or incurred on each of such issues, and at what stages of the litigation they were so incurred or expended. For grounds of this motion The Kansas City Southern Railway Company says that, if any such costs are taxable some of the same may have been incurred, and undoubtedly were incurred, in the litigation of issues for which costs of that kind would not be taxable.

The Kansas City Southern Railway Company further moves the court to set this cause down for trial before the court on the issues as to whether or not this litigation was instituted or maintained, or the charges made in the bills or petitions of the Cambria Steel Company or the Kansas City Southern Railway Company or the receivers of the Kansas City Suburban Belt Railroad Company, in bad faith and with no reasonable ground for making the same, or carrying on the said litigation.

For ground of this motion the defendant says that there has been no trial of these issues and no finding of any court thereon, and defendant is entitled to have the issues definitely tendered in order that it may answer the same, introduce evidence thereon, and have a trial and determination thereof in the regular way.

Defendant further states that it is prepared to introduce evidence to show that this litigation was prosecuted not only by itself but by receivers appointed by this court; that the same was brought in good faith, after careful investigation, upon the advice of competent counsel, and upon reasonable cause, and that the litigation was necessary in order to settle the rights and obligations of the various parties thereto.

F. H. MOORE
CYRUS CRANE
A. F. SMITH
Attorneys for The Kansas City Southern Railway Company.

Filed in the District Court of the United States, September 22, 1923.

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39 (Order overruling Motion to set aside order appointing Special Master and to require Guardian Trust Company to file Petition, etc.)

The motion of The Kansas City Southern Railway Company to set aside the ruling and order of the Court herein filed June 25, 1923, appointing a master herein for the purpose of ascertaining the costs and expenses incurred by the Guardian Trust Company and its Receiver in this litigation filed in this Court and cause on, to-wit, September 22, 1923, came on for hearing on October 26, 1923, said Railway Company appearing by its solicitors, and H. C. Flower, Receiver of the Guardian Trust Company, appearing by his solicitors,
40 and the said motion having been duly considered by the Court, the same is hereby overruled.

The Motion of The Kansas City Southern Railway Company, filed September 22, 1923, to require the Guardian Trust Company to file a petition herein setting forth the ground or grounds upon which it bases its claim for extraordinary or punitive costs, and for a trial before this Court on the issue as to whether or not this litigation was instituted or maintained in bad faith and with unreasonable ground for making the same, came on for hearing on the same day, said parties appearing by their respective solicitors, and the same having been duly heard and considered by the Court, is overruled.

The defendants, The Kansas City Southern Railway Company and the Cambria Steel Company, asked and were

allowed exceptions to the action of the Court in overruling each of said motions.

ARBA S. VAN VALKENBURGH
Judge.

Filed in the District Court of United States November 2, 1923.

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41 Motion By The Kansas City Southern Railway Company and Cambria Steel Company for Leave to File Herein Its Petition "For Leave to Introduce Testimony Proving that this Litigation was Instituted and Conducted on the Part of Each of the Complainants in Entire Good Faith and that Therefore No Costs as Between Soliciton and Client should be Taxed Against them of Any of Them."

Comes now the Cambria Steel Company and The Kansas City Southern Railway Company, complainants as stated in the above entitled causes, and pray the court for leave to file the duly verified petition hereto attached, which
42 petition asks leave to introduce testimony proving that this litigation was instituted and conducted on the part of each of the complainants in good faith and that, therefore, no costs as between solicitor and client should be taxed against them or any of them; and further pray that the court after permitting the same to be filed will entertain said petition and grant the relief therein prayed for.

THE KANSAS CITY
SOUTHERN RAILWAY
COMPANY.
By F. H. Moore, Cyrus Crane,
A. F. Smith, Its Atorneys.

CAMBRIA STEEL
COMANY,
By R. E. Ball.

Filed in the United States District Court Dec. 8, 1923.

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43 Petition of the Kansas City Southern Railway Company for Leave to Introduce Testimony Proving That this Litigation was Instituted and Conducted on the Part of Each of the Complainants

In Entire Good Faith, and that, Therefore, no Costs as between Solicitor and Client Should be Taxed Against Them or Any of Them.

44 Comes now The Kansas City Southern Railway Company, herein referred to as your petitioner, and shows to the court:

1. Your petitioner protests against the statement and finding contained in the opinion of the court herein, dated June 20, 1923, to the effect that the United States Circuit Court of Appeals for the Eighth Circuit has found and determined in this case that this litigation was not instituted in good faith, and that it involved wanton, wilful and oppressive charges of misconduct, and respectfully insists that no such finding and determination were in fact made by such appellate court, and, further, that no such finding or determination could lawfully have been made by said court, since no such issue by appropriate pleadings has ever been made in this or in any other court, and no opportunity has ever been afforded your petitioner or any of said complainants to meet such issue by the introduction of evidence in the orderly course of procedure; and your petitioner further respectfully insists that the only duty devolving upon this court under the mandate of the Supreme Court, affirming the decision of the Circuit Court of Appeals, is to tax the costs in this case in the ordinary manner as between party and party, and that no right, duty or authority exists on the part of this court to tax costs against your petitioner as between solicitor and client.

2. Although no charge of bad fainth in the institution or conduct of this litigation has ever been made so that your petitioner could meet such issue by the introduction of testimony, as is its right under the law of the land, and although it is not now advised, and never has been advised of any definite and specific charges, nevertheless it now prays the court for leave, subject to the protest contained in the foregoing paragraph, to offer testimony proving the facts and circumstances surrounding the institution of this liti-
45 gation and its conduct from beginning to end, as follows:

(a) This litigation was instituted on September 6, 1900, by the filing of a creditor's bill by the Cambria Steel Company, referred to herein as the Cambria bill. The Kansas City, Pittsburg & Gulf Railway Company, herein called the Gulf Company, went into the hands of the receivers April 1, 1899. The Kansas City Suburban Belt Railroad Company,

herein called the Belt Company, was one of its allied or subsidiary companies. The Gulf Company, together with other allied or subsidiary companies, had been organized by the Guardian Trust Company, herein called the Trust Company, or by its officers in its behalf, and the Belt Company, shortly after its incorporation, had passed under the control of the Trust Company; and both the Gulf Company and the Belt Company had been financed by or through the Trust Company, and the said companies had common or interlocking officers and directors. The property of the Gulf Company was sold at foreclosure sale in March, 1900, and your petitioner became the owner thereof, and at about that time your petitioner became the owner of a majority of the stock and bonds of the Belt Company. After the appointment of receivers for the Gulf Company, as aforesaid, the books and records of the Belt Company came into the possession of said receivers, and afterwards into the possession of your petitioner. Prior to the filing of the Cambria bill, and between the first of January and the first of August, 1900, an examination had been made of the books of account and records of the Belt Company, and likewise an examination of the books of the Trust Company relating to the state of accounts between these two companies by auditors acting in the interest and at the request of the Belt Company. Such accounts covered a period of approximately ten years, during which period, as above stated, the Belt Company and
46 the Trust Company had largely common officers and directors, and the Trust Company thereby dominated and controlled the affairs of the Belt Company, and was in a position, if it so desired, to impose excessive charges and enforce unjust demands against the Belt Company. The investigation of such records, accounts and books of account, so made as aforesaid, indicated that the Trust Company had in fact in numerous instances imposed excessive demands on the Belt Company, and had made unjust charges against it, covering said period. The results of this investigation were carefully considered by the Kansas City counsel for the Belt Company, who were also counsel for your petitioner, at the request of the General Counsel of these companies, then located in Chicago, and after numerous conferences and consultation between them, the said Kansas City counsel in July, 1900, reached the conclusion, which the results of said investigation fully warranted and justified, that an action of accounting should be had between the Belt Company and the Trust Company, in the belief, in good faith entertained by them, that such an accounting would result in materially reducing the apparent indebtedness of the Belt Company to

the Trust Company, or in wiping it out altogether. At the same time the said Kansas City counsel, from a consideration of the results of said investigation, reached the conclusion, which was fully warranted and justified, that the Belt Company was then hopelessly insolvent and that a receiver should be appointed for it, and that the lien of its mortgage should be foreclosed and its property sold at foreclosure sale. These conclusions were duly reported to said General Counsel, who, together with his law partner, had previously been advised of the results of the investigation conducted by said accountants. After giving careful consideration and study to the said report and recommendation of the Kansas City counsel and to the said statements of the accountants, and to other facts and circumstances bearing upon the question, said General Counsel and his said law partner concurred in
47 the recommendation made by said Kansas City counsel, and the latter was directed to prepare a bill or petition for an accounting between said companies. Accordingly, in August, 1900, the said Kansas City counsel prepared a petition for an accounting between the Belt Company and the Trust Company, and forwarded same to the said General Counsel, the allegations of said petition being based upon the investigation so made by said accountants, as aforesaid.

About the middle of August, 1900, the Belt Company and your petitioner were reliably advised that the Trust Company had itself conceived the idea of procuring the appointment of a receiver for the Belt Company, and that it was then endeavoring to persuade one of the creditors of the Belt Company to institute such an action. Thereupon counsel for your petitioner and for the Belt Company advised the officers of the Cambria Company, which was then a creditor of the Belt Company in a large amount, of the situation as it then existed and pointed out to them certain assets of the Belt Company, then held as collateral by the Trust Company, which would be released and become subject to the demands of creditors if an accounting between the Belt Company and the Trust Company were had and should result in substantially reducing or altogether wiping out said alleged indebtedness of the Belt Company to the Trust Company. On September 1, 1900, the Trust Company served notice upon the officers of the Belt Company that it, the Trust Company, would proceed to sell at an early date the collateral then held by it as security for the alleged indebtedness of the Belt Company to it and apply the proceeds upon said indebtedness. There-

upon, and during the first week in September, 1900, the Cambria Company, through its counsel then residing in Philadelphia, Pa., caused a bill for an accounting to be prepared by its counsel, residing in Chicago, Illinois, and said
48 bill, when prepared, was forwarded to local counsel of the Cambria Company in Kansas City, Missouri, and said bill was revised by the latter, and when so revised by him, was by him verified and filed in the Circuit Court of the United States at Kansas City, Missouri, on September 6, 1900. In said proceeding, Stuart R. Knott and Edward F. Swinney were appointed Receivers of the Belt Company and an injunction was issued against the Trust Company, forbidding the sale by it of said collateral security. In the order appointing said Receivers, the Judge of the United States Circuit Court at Kansas City, Missouri, having jurisdiction of the proceeding, authorized and directed said Receivers to institute such actions of accounting as they might deem necessary to recover the assets of the Belt Company, the purpose and intent of the court at the time being to authorize and direct said Receivers to institute an action of accounting against the said Trust Company. On the same day, September 6, 1900, an action to foreclose the mortgage on the property of the Belt Company was filed in the same court by the Trustee in its mortgage, and the same Receivers were appointed in said action.

It was the opinion of said Kansas City counsel, said General Counsel and his law partner, and said counsel for the Cambria Company that the investigation of the state of the accounts, records and books so made by the accountants aforesaid, together with other facts and circumstances then known to them, fully justified and warranted, and in fact required, an accounting to be held and taken between the Belt Company and the Trust Company; and the said action of accounting was instituted as a result of the belief in good faith entertained by them, and each and all of them, that such an accounting would materially reduce or entirely wipe out the alleged indebtedness of the Belt Company to the Trust Company.

49 Your petitioner prays leave to offer in this case oral evidence, together with records and other documentary evidence, conclusively proving the facts above stated, together with other facts and circumstances demonstrating that the Cambria suit was instituted in good faith and in the sincere and honest belief that an accounting between the two named companies was proper, necessary and indispensable to

ascertain which of them was indebted to the other and in what amount.

(b) After the institution of the Cambria suit as aforesaid, Messrs. Knott and Swinney, Receivers of the Belt Company, in 1901 filed in said cause a cross-bill against the Trust Company and others, demanding an accounting similar to the accounting prayed for in the ancillary bill of the Belt Company and its Receivers, afterwards filed as hereinafter stated. The filing of this cross-bill was within the authority and direction of the court in its order appointing them as Receivers as aforesaid. The said cross-bill was filed in good faith, and the said Receivers and their counsel believed, and were fully justified in believing that it would result in materially reducing or in entirely wiping out the alleged indebtedness of the Belt Company to the Trust Company. At that time Hon. Francis M. Black was the Receiver of the Trust Company, appointed by the Federal Court at Kansas City, Missouri, and filed, or caused to be filed, a demurrer to said cross-bill, on the ground that it was not germane to the original cause and could not be maintained therein. It was the opinion of counsel for said Receivers that this position was probably well taken, and that the desired accounting would have to be by an independent action unless counsel for the Trust Company would consent to have the accounting carried on in the Cambria case. Accordingly, counsel for said Receivers initiated negotiations with Judge Black to secure, if possible, a withdrawal of his demurrer and the filing of an answer and the making up of the issues in the Cambria case. This was in October or November, 1901. At that time the Trust Company was insisting, in certain litigation which was then pending in the Federal Court at Kansas City, to which it was a party, that your petitioner, under the reorganization plan of the Gulf Company and in other ways, had become liable for the floating debt of the Gulf Company, the Belt Company and other associated companies, and that it was therefore personally liable for any indebtedness of the Belt Company that might be proven to exist in favor of the Trust Company. This, in the opinion of counsel for your petitioner and for said Receivers, accentuated the necessity for an accounting between the Belt Company and the Trust Company, in order to determine the true state of the accounts between said companies. The said negotiations with Judge Black disclosed the fact that the Trust Company was willing that there should be an accounting between the Belt Company and the Trust Company provided the Belt Company should be made a party complainant so that if the Trust Company should be suc-

cessful in the accounting, it might have a judgment against the Belt Company for the amount so found to be due. This was agreed to by all parties in interest, and accordingly, on November 20, 1901, a stipulation was entered into, which, omitting caption, is as follows:

It is hereby stipulated and agreed by and between Stuart R. Knott and Edward F. Swinney, receivers of the Kansas City Suburban Belt Railroad Company, complainants in the cross bill in the above entitled cause, and the defendants, The Guardian Trust Company and Francis M. Black, its receiver, Second Street Improvement Company and Cambria Steel Company, as follows:

First: That the said complainants shall withdraw or dismiss their cross bill heretofore filed herein, and shall
51 file an amended cross bill, in the nature of an ancillary bill in this cause, making the Kansas City Suburban Belt Railroad Company a co-plaintiff with them in said amended ancillary cross bill, and also making the Cambria Steel Company, the complainant in the original bill herein, a defendant in said amended ancillary cross bill, and that said amended ancillary cross bill shall be filed on or before the 15th day of November, 1901, and that the defendants, the Guardian Trust Company and its receiver and the Second Street Improvement Company and the Cambria Steel Company, shall have leave to plead or answer to said amended ancillary cross bill, on or before the first Monday in December, 1901.

Second. That the accounting between the Kansas City Suburban Belt Railroad Company and its receivers and the Guardian Trust Company and its receiver, sought by the said amended ancillary cross bill, shall be expended by all of the parties hereto, and whatever balance, if any, that may be found due to the said Guardian Trust Company or its receiver, from the said Kansas City Suburban Belt Railroad Company or its receivers shall be entered up in this cause as a judgment in favor of the said Trust Company and its receivers and against the Suburban Belt Railroad Company and its receivers without the necessity of presenting any claim therefor by way of cross bill; or other affirmative pleading; and whatever balance, if any that may be found due to the said Suburban Belt Railroad Company, or its receivers, from said Guardian Trust Company or its receivers, shall be entered up in this cause as a judgment in favor of the said Kansas City Suburban Belt Railroad Company and its re-

ceivers, and against the Guardian Trust Company and its receiver.

Dated this ..... day of November, 1901.

STUART R. KNOTT and
EDWARD F. SWINNEY,
Receivers of the Kansas City Suburban Belt Railroad Company
By Thomas R. Morrow,
S. W. Moore,
Their Solicitors.

52

GUARDIAN TRUST COMPANY
and FRANCIS M. BLACK,
Its Receiver.

TRIMBLE & BRALEY,
Its Solicitors.

SECOND STREET IMPROVEMENT COMPANY,

TRIMBLE & BRALEY,
Its Solicitors.

CAMBRIA STEEL COMPANY,
By .....
Its Solicitors.

I consent and agree to the foregoing stipulation with the understanding that it shall in no wise prejudice the right, if any, which the Cambria Steel Company has to subject any debt found to be due from the Guardian Trust Company, or to subject any property or collateral or the proceeds thereof, heretofore or now in the hands of the Guardian Trust Company or its receiver, or its or his assigns, and all the testimony introduced by any party herein shall be with the understanding that the Cambria Steel Company can, if it so desires, use the same upon final hearing of its bill in the case above entitled.

FRANK HAGERMAN,
Solicitor for Cambria Steel Company.

By said stipulation the Trust Company consented to an accounting between it and the Belt Company, and that such accounting should be had in the Cambria case, upon condition that the Belt Company should become a party complainant in an ancillary bill for an accounting, and that such

accounting should be expedited. All parties in interest construed said stipulation as a mutual consent that such an accounting should take place. This was also the ruling of this court, which, after reciting the foregoing stipulation,
53 said, among other things, in an opinion handed down by it in this case on the ..... day of March, 1908, denying a motion filed by the Trust Company:

The Guardian Trust Company, by its stipulation, its appearance and answer in said cause has consented to the submission to said Master the hearing and finding on all the matters involved in controversy between it and the parties to said litigations. It has consented that the Master take an accounting, finding and report as to the respective rights and claims of the parties to the property, notes, bonds and claims involved.

No appeal was ever taken by the Trust Company from the order therein made. The Trust Company has not at any time withdrawn or attempted to withdraw from the terms of said stipulation or to disavow its consent to an accounting therein made. At the time of the making of said stipulation, little, if any, expense had been incurred by the Trust Company on account of this litigation.

Your petitioner prays leave to offer documentary and oral proof herein demonstrating the truth of the allegations in this paragraph contained.

(c) After the filing of an ancillary bill by the Belt Company and its Receivers, as was done in December, 1901, as contemplated by the foregoing stipulation, the issues were made and the taking of testimony thereunder and under the bill of the Cambria Company was commenced in January, 1903. In February, 1905, your petitioner became a party to the litigation and by stipulation, signed by counsel for the Trust Company consenting thereto, filed its intervening petition, claiming the right as purchaser, under the after-acquired property clauses in the mortgages of the Belt Company and other companies, to the collateral held by the Trust Company to secure the alleged indebtedness of the
54 Belt Company to it. The Trust Company answered said intervening petition, and testimony was taken upon the issue so made. In 1905, the Trust Company sought to file its cross-bill in the Cambria case, but the court denied it leave to do so, because, in the opinion of the court, the said cross-bill set up matters constituting an attack upon the integrity of the foreclosure proceedings referred to above.

Thereupon the Trust Company, in 1905, filed its suit or suits in the Circuit Court of Jackson County against your petitioner to recover upon the notes and account involved in the accounting then in progress in the Cambria case. Your petitioner made two unsuccessful efforts to enjoin said proceedings in the State court, on the ground that a prior jurisdiction to hear and determine said issues was vested in the Federal Court, the lower court in each instance granting the injunction, and in each case the injunction order being reversed by the Circuit Court of Appeals. The testimony in the Cambria case was closed early in 1906, and the case was argued continuously for two weeks in the summer of 1906 before Special Master Hon. Shannon C. Douglass. He filed his report in this court in May, 1910. Upon the issue of debt or no debt as between the Belt Company and the Trust Company, he eliminated three items complained of by the Belt Company and its Receivers, and found in favor of the Trust Company as to the other items. He held that your petitioner was entitled to certain lands, the title to which stood in the name of the Central Improvement Company, the value of which at the time was approximately $200,000. He also found that your petitioner was not liable for the debts of the Belt Company. The report of the Master was confirmed by this Court in June, 1910, and a decree entered accordingly.

Your petitioner prays leave to offer evidence, both record and documentary, in support of the foregoing allegations in this paragraph, conclusively proving them to
55 be true as stated; and your petitioner further offers to prove, by both record and oral testimony, that the counsel for your petitioner and for the Belt Company and its Receivers, in filing said ancillary bill, as contemplated in said stipulation, in filing said intervening petition, in making the two applications for injunction to stay proceedings in the State Court, and generally in conducting said litigation, acted in absolute good faith from beginning to end, in the honest belief that an accounting between the Belt Company and the Trust Company should and would result in the reduction or wiping out of the alleged indebtedness of the Belt Company to the Trust Company, in the belief that your petitioner was entitled to the collateral, or the more valuable portion of the collateral held by the Belt Company as aforesaid, in the belief that the said applications for an injunction to stay proceedings in the State court were well taken and should be granted, and that your petitioner was not in any way liable for the debts of the Belt Company, and your pe-

titioner offers to prove the same by other and further testimony, both oral and documentary.

(d) The Trust Company in 1910 appealed from the decree so entered by this court as aforesaid, and said cause was determined adversely to your petitioner by the Circuit Court of Appeals. The case was afterwards reargued before the Circuit Court of Appeals, and again the decree of this court was reversed. An appeal was thereupon taken to the Supreme Court of the United States, where, in 1916, the judgment of the Circuit Court of Appeals was affirmed, the Chief Justice and Mr. Justice VanDevanter dissenting.

Your petitioner offers to prove by both record and oral testimony that the conduct of this cause in the Circuit Court of Appeals and in the Supreme Court, as aforesaid, was carried on by counsel in entire good faith, and in the full
56 and honest belief that the decree of this court entered in June, 1910, holding that your petitioner was not liable for the debts of the Belt Company, and that your petitioner was entitled to the lands of the Central Improvement Company, was right, and that such decree should be affirmed.

5. No pleadings have ever been filed in this cause by the Trust Company, or anyone else, tendering the issue of the good faith of your petitioner, or of the Cambria Company, or of the Belt Company or of its Receivers, in instituting and carrying on this litigation, or any part or branch of it. Neither your petitioner nor the others named have had an opportunity to establish and demonstrate, as they and each of them are prepared to do, that said litigation, and each and every part and branch of it, was instituted and carried on in good faith. None of them has ever had its day in court. To deny them an opportunity to be heard at this time is a violation of the guaranty of due process of law contained in the Federal and State constitutions. This result, your petitioner asserts, was never contemplated by the decision of the Supreme Court or of the Circuit Court of Appeals for the Eighth Circuit.

Wherefore your petitioner prays that an opportunity may be afforded it absolutely to demonstrate, as it is prepared to do, that this Cambria litigation, and each and every part and branch of it, was instituted in good faith and carried on from beginning to end in the honest belief that the complaining parties were entitled, respectively, to the relief which they sought; that the Trust Company be required to formulate its charges in writing, if any it has, of bad faith in the institu-

tion and prosecution of said litigation, of any branch or part of it; and that such charges be served upon your petitioner, and an opportunity afforded it to answer the same and
57 to support its answer by the introduction of evidence in due and orderly course of procedure; and that, even if the court shall decline to require the Trust Company to formulate and serve its charges, nevertheless this petition be granted and that the matter be set down for hearing before this court at such time as may be convenient to the court and to the interested parties; and for such other and further relief as may be agreeable to equity and good conscience.

FRANK H. MOORE
CYRUS CRANE
A. F. SMITH
Solicitors for Petitioner.

Samuel W. Moore
Of Counsel.

State of Missouri,
County of Jackson—ss.

Frank H. Moore, being first duly sworn on his oath, deposes and says that he is General Solicitor of The Kansas City Southern Railway Company, and that he makes this affidavit for and on behalf of the said company; that he has read the foregoing petition and that the matters therein stated are true to the best of his information and belief.

FRANK H. MOORE

Subscribed and sworn to before me this 5th day of December, 1923.

(Seal)

CLARENCE R. HALL,
Notary Public, Jackson County, Mo.

My commission expires Oct. 18th, 1924.

The Cambria Steel Company, complainant herein, hereby adopts the above petition on its own behalf and prays for the relief therein asked for.

.....
Solicitor for the Cambria Steel Company.

58 (Order overruling Motion of Kansas City Railway Company, et al., for leave to introduce testimony, etc.)

In the District Court of the United States for the Western Division of the Western District of Missouri

Cambria Steel Company, Complainant

vs.

Kansas City Suburban Belt Railroad Company, The Union Terminal Railroad Company, Kansas City Independence Air Line, Guardian Trust Company, Missouri Elevator & Terminal Company, Central Improvement Company, Second Street Improvement Company, Fairmount Amusement Company, and Northern Townsite Company, Defendants

Bill In Equity.

Edward F. Swinney, as Receiver of the Kansas City Suburban Belt Railroad Company, and Kansas City Suburban Belt Railroad Company, Complainants

No. 2468 vs.

Cambria Steel Company, Guardian Trust Company, Missouri Elevator & Terminal Company, Central Improvement Company and T. T. Crittenden, Its Receiver, Northern Townsite Company, and Fairmount Amusement Company, Defendants

Ancillary Bill.

The Kansas City Southern Railway Company, Complainants

vs.

Guardian Trust Company, Kansas City Suburban Belt Railroad Company and Edward F. Swinney, as Receiver of the Kansas City Suburban Belt Railroad Company, Central Improvement Company and T. T. Crittenden, Its Receiver, Cambria Steel Company, Northern Townsite Company, and Its Receiver, Fairmount Amusement Company, and Missouri Elevator and Terminal Company, Defendants

Intervening Petition.

Comes now The Kansas City Southern Railway Company and the Cambria Steel Company, complainants as designated in the above entitled causes, by their solicitors and
59 present to the court their Motion and Application for leave to file a verified petition asking therein leave to introduce testimony to prove that the above entitled litiga-

tion was instituted and conducted on the part of each of the complainants in good faith and that, therefore, no costs as between solicitor and client should be taxed against them or either of them, and the court having seen, read and considered said Motion and Application and petition, and being made acquainted with the contents thereof, doth order that the same be and they are hereby denied and permission to file the same is refused, and leave to introduce testimony of the kind and character set out in said petition is also refused, to which orders and rulings of the court The Kansas City Southern Railway Company and the Cambria Steel Company both duly excepted.

ARBA S. VAN VALKENBURGH
Judge.

Dated at Kansas City, Missouri, this 8th day of December, 1923.

Filed in the United States District Court December 8, 1923.

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61 Report of Henry D. Ashley, Special Master.

Comes now Henry D. Ashley, Special Master in Chancery, heretofore appointed by the Honorable Arba S. Van Valkenburgh, Judge of this court, by order made June 25, 1923, directing him "to ascertain, take and state an itemized account of all costs and expenses paid or incurred by the Guardian Trust Company, or its various receivers, for and on account of court costs and other expenses incurred by said Trust Company and its receivers in and about its resistance of and defense against this litigation and in defending against the various original and dependent bills and petitions filed herein against the Guardian Trust Company, or its receiver, by or at the instance of Kansas City Southern Railway Company, Cambria Steel Company, Kansas City Suburban Belt Railroad Company, or its receivers, or its subsidiary companies, or their receivers, parties to this cause, and in defending, maintaining, protecting and preserving therein the right, equity, title and lien of the Guardian Trust Company, or its receiver, as pledgee of the property described in paragraph V of the former decree of June, 1910, or in the property of any corporation whose stock was so held in such pledge and right to dispose of and realize upon said pledged property according to the terms and pledges under which said property was pledged, including among other expenses, those for attorney fees, counsel or solicitor fees, stenographer fees, expert accountants' fees, printing fees, traveling expenses and other expenses incurred in the premises",

this Master being ordered therein to state said account in accordance with the findings, rules and principles, as set forth in the memorandum opinion of said Arba S. Van Valkenburgh, Judge, filed June 20, 1923, and files this his report as follows:

62

The Master finds costs as between party and party due and owing to H. C. Flower, Receiver of the Guardian Trust Company from the Kansas City Southern Railway Company and Cambria Steel Company under Group 1 of claim of said H. C. Flower, Receiver as aforesaid, filed October 23, 1922, as follows:

Items 1, 2 and 3 of said claim, allowed by the Master in the sum of	$8,553.50
Items 4 to 32 of said claim, inclusive, allowed for originals in the sum of	2,725.77

and disallowed for the balance of said items, amounting to $3,948.93, paid for carbons. The Master allows for amount paid for originals and disallows for amount paid for carbons on the testimony of Jetmore as to the amount paid for original and carbons and manner in which bills were rendered and collected (See Southern Company's Exhibit "B", found at page 826-A of this record).

Item 33. disallowed as costs between party and party but included in disbursements for which judgment was rendered by the Supreme Court of Missouri in Case of Mecartney against Guardian Trust Company, and allowed under Group 2.

Item 34. allowed for	1.15

Voucher No. 477 regarding this item has note attached, signed by J. McD Trimble; "Ordered for use in Cambria Case" (see page 89 of this record).

Items 35 to 40, inclusive, disallowed as costs be-

	Amt. Fwrd.
63	$11,280.42

tween party and party but included in disbursements for which judgment was rendered by the Supreme Court of Missouri in case of Mecartney against Guardian Trust Company and allowed under Group 2 of claim.

Item 41, disallowed by the Master as the Master is of opinion that he has no power to re-tax costs in these injunction cases already taxed in the United States Court of Appeals.

Items 42 to 56, inclusive, disallowed under Group 1, being included in judgment of Supreme Court of Missouri for expenses incurred in suit of Mecartney against Guardian Trust Company and allowed under Group 2.

Item 57, allowed for 170.80
Voucher No. 1998 for this item contains the following note: "Correct S. C. Douglass, Special Master". This Master finds that Special Master Douglass ordered Lightburne to report oral arguments for his own use. (For voucher, see page 91 of this record).

Items 58 to 67, inclusive, disallowed under Group 1 but included under Group 2, for same reasons as Items 35 to 40.

Item 68, disallowed for same reasons as stated on Item 41.

Items 69 and 70, disallowed. No proof except voucher and that fails to show what use was made of those copies of documents (see record, pages 92 and 93 of this record).

Items 71, 72 and 73, disallowed for the same reasons as stated as to Item 41.

Item 74, allowed for the sum of 35.00

Amt. Fwrd.

64

$11,486.22

Voucher shows $19.70 was paid out by Gates & English for recording lis pendens and final decree and order for appeal in Cambria case and $15.30 was paid for certified copies of said final decree and order of appeal (see this record, page 98).

Item 75, allowed for 3.10
Voucher shows amount disbursed by Gates & English for certified copies of documents in Cambria case (see this record, page 98.)

Item 76, allowed for 5.00
Disbursed by Gates & English for certified copy of decree in Belt suit.

Item 77, disallowed for same reason as stated as to Item 41.

Item 78, allowed for 5.00
Voucher shows paid for certified copy of opinion in Cambria case.

Items 79 and 80, credits to be stricken from account as Master has disallowed all items of cost in Court of Appeals, being of the opinion that he lacks power to re-tax such costs.

$11,499.32

The Master allows and finds as costs between party and party, in favor of H. C. Flower, Receiver of Guardian Trust Company and against K. C. Southern Railway Company and Cambria Steel Company under Group 1, the total amount of $11,499.32

65 Claim of H. C. Flower, Receiver, prays for interest on all items in Group 1 from date of disbursement of each item at six per cent. The Master, however, is of opinion that in equity allowance of interest on claims under Group 1 is in the discretion of the Master sitting as a Master in Chancery. In view of the allowance of substantial costs in this entire report and of all the surrounding circumstances in this protracted litigation; of the delays in this matter of taxation of costs not chargeable against the Southern Company or Camrbia Company; and in view also of the fact that interest would not be allowed at law on these claims for many reasons, including lack of demand and the unliquidated character of claim, the Master therefore finds and recommends that interest should be awarded on claims allowed under Group 1 only from the date of confirmation of this report, if confirmed, by the United States District Court, and from the date of such confirmation until the payment of such costs.

Group II

Costs and Expenses as Between Solicitor and Client.

Item 81, allowed on testimony of Mr. Braley for .. $1,000.00
(See page 269 of this record).

Item 82, allowed for 5,343.75
on testimony of Mr. Rosenberger, Mr. Braley and Mr. Willey (see pages 514, 266, 402 of this record.)

Items 83 to 107, inclusive, all disallowed, for the reason that at the directors' meeting of October 22, 1902, J. McD Trimble was elected general

Amt. Fwrd. $6,343.75

counsel of the Guardian Trust Company at a salary of $500.00 per month and the Master finds Guardian Trust Company would have been liable for this salary whether any services have been rendered in the Cambria litigation or not and that while such services were unquestionably of great value to the Trust Company the salary of J. McD Trimble as general counsel as fixed by the directors is not properly chargeable in this case as costs between solicitor and client.

Item 108, Allowed for 5,000.00
The amount paid by order of directors of Guardian Trust Company as a retainer to Mecartney in the Cambria and Channel and Dock litigation and credit having given by Mecartney in his suit against the Guardian Trust Company and such amount credited on the final judgment rendered in said suit by the Supreme Court of Missouri. The Master finds that the Channel and Dock litigation in Texas was, under the memorandum opinion and order appointing this Master, part and parcel of the plan of the Kansas City Southern Railway and its representative, the Provident Life & Trust Company, "to despoil the Guardian Trust Company of its property". Testimony offered before the Master shows the Pittsburg & Gulf Railroad Company carried on its traffic from Port Arthur to the Gulf, a distance of about twelve miles, over the terminals owned by the Port

Amt. Fwrd. $11,345.75

Arthur Channel & Dock Company; that such terminals were part of the reorgan-

ization effected by the Kansas City Southern Railway. The Master notes that Judge Bryant in his order of dismissal of the Texas case provides inter alia as follows: "This order of dismissal is entered on the stipulation that it shall in no manner affect the merits of companion litigation pending in the courts of Missouri between the parties, or some of them, herein named". (Page 374 of this record.)

Item 109, allowed for 6.000.00
although part of the services for which this voucher was paid were in the Texas case, for reason stated under Item 108.

Item 110, disallowed, for same reasons as to Items 35 to 40 inclusive, being a Mecartney item included in Mecartney judgment by Supreme Court of Missouri.

Item 111, allowed for 5,000.00
for same reasons stated in allowance of Item 108.

Items 112 and 113, disallowed, for same reasons as disallowance of Items 35 to 40, inclusive, being Mercartney items included in Mecartney judgment by Supreme Court of Missouri.

Item 114, allowed for 5,000.00
for same reason as Item 108.

Item 115, disallowed for reasons as disallowance of items 35 to 40, inclusive, being Mecartney items included in Mecartney judgment by Supreme Court of Missouri.

Amt. Fwrd.

68

$27,343.75

Item 116, allowed for 5,000.00
for same reasons as Item 108.

Item 117, allowed for 7,500.00
for same reasons as Item 108.

Item 118, disallowed, for same reasons as Items 35 to 40 inclusive; Mecartney item; included in Mecartney judgment by Supreme Court of Missouri.

Item 119, allowed for 3,000.00
Voucher shows services rendered in Cambria litigation (see voucher, page 115, of this record).

Item 120, allowed for 4,000.00
Voucher shows for services rendered in Belt Line lititgation (see this record, page 118).

Item 121, allowed for 2,000.00
Voucher shows for services performed in Cambria litigation (see this record, page 120)

Item 122, allowed for 3,000.00
Voucher shows that it was for services rendered in Cambria litigation (see this record, page 120).

Item 123, allowed for 4,000.00
Voucher shows it was for services rendered in Suburban Belt Railway Company litigation (see voucher, page 120 of this record).

Item 124, allowed for 1,000.00
Letter attached to voucher shows it was for retainer in Belt litigation (see this record, page 122.)

Item 125, allowed for 4,000.00
Amt. Fwrd.

69

$60,843.75

Voucher shows it was for services performed in the Belt and Kansas City Southern litigation (see page 124 of this record).

Item 126, allowed for 1,500.00
It was for balance of services in Cambria litigation for which Guardian Trust Company had contracted to pay $2500.00. (See page 124, this record).

Item 127, allowed for 9,555.74
It is to be noted that first item under Item 127 should have been for principal sum of $2550.00 instead of 2250.00, as stated in claim, but is only allowed for amount claimed. This first item, however, is not to be confused with item of $2250.00 disallowed by the Supreme Court of Missouri in the case of Trimble & Braley against the Guardian Trust Company for services "in

procuring discharge of such receiver" (of the Trust Company) (See Supreme Court opinion in Trimble & Braley against Guardian Trust Company, 244 Mo. l. c. 251, 267).

Item 128, allowed for 7,500.00
Voucher shows was paid Gates & English for services in Cambria case (see this record, page 130).

Item 129, allowed for 1,000.00
Voucher shows paid for additional services of Mr. D. J. Haff in United States Circuit Court of Appeals at St. Louis. The Master finds the services were rendered in Belt litigation. (See page 132 of this record.)

Amt. Fwrd.

70

$80,399.49

Item 130, allowed for 5,000.00
Voucher shows paid for services rendered by Gates & English in Belt ligitation, (See this record, page 132.)

Item 131, allowed for 200.00
Voucher shows paid Clephane & Clephane, Washington lawyers, for filing motion in United States Supreme Court in Cambria case (See page 133, of this record).

Item 132, allowed for 1,000.00
Voucher shows paid for retainer to F. W. Lehmann on his employment to argue Cambria case in the Supreme Court of the United States. (See page 133 of this record.)

Item 133, allowed for 5,000.00
Voucher shows paid for services rendered by Gates & English in Cambria case (see voucher, page 135 of this record).

Item 134, allowed for 15,000.00
Paid by order of this court to Mr. F. W. Lehmann for services in arguing Cambria case in Supreme Court of the United States.

Item 135, allowed for 135,013.56
In claim of H. C. Flower, receiver, this item is given credit of $7,745.07 for sundry expense

items enumerated in itemized statement annexed to plaintiff's petition in said suit, paid by the Guardian Trust Company and "charged to Kansas City Southern Railway Company elsewhere in this statement of account". Above amount, $135,013.56, was paid on final judgment of Supreme Court of Missouri after vigor-

Amt. Fwrd.

71

$241,613.05

ous defense made in good faith by the Guardian Trust Company represented by able counsel when Guardian Trust Company was subject to execution on such judgment. The Master finds that under order of the United States District Court of June 25, 1923, and under memorandum opinion of Judge Van Valkenburgh, filed June 20, 1923, the Master is foreclosed from consideration of the reasonableness of either the amount allowed Mecartney for counsel fees or expenses included in the judgment. The Master therefore allows $135,013.56 under this item, finding, as hereinbefore stated, that the Texas case was a part of the Kansas City Southern Company's plan to despoil the Guardian Trust Company of its property. As to these expenses allowed by the State Supreme Court in the case of Mecartney against Guardian Trust Company, it is to be noted that Mr. Rosenberger testified that all expenses allowed in the Mecartney judgment were expenses in the Cambria litigation (see this record, page 556). The Master therefore strikes out from this claim credit of $7,745.07 given on item 135 by the receiver of the Guardian Trust Company and also eliminates from the entire claim of Henry C. Flower, Receiver of Guardian Trust Company, both under Group 1 and Group 2, all the Mecartney items of expense incurred in the Cambria litigation enumerated in such itemized claim for reimbursement for its costs and expenses, filed October 22, 1923.

Item 136, allowed for 47,000.00
Paid under order made by this court September 15, 1922 (page 137 of this record).

72 Amt. Fwrd. $288,613.05

Item 137, allowed for 5,859.40
This item was heretofore passed on by this Master, reported to the United States District Court and such allowance confirmed and paid by order of this court. (See pages 138 and 139 of this record).

Items 138 to 164, inclusive, disallowed and stricken from the claim, for reason stated under Item 135.

Item 165, allowed for 55.95
(See page 139 of this record for voucher).

Item 166, allowed for 24.60
(See page 141 of this record for voucher).

Item 167, allowed for 6.00
(See page 142 of this record for voucher.)

Item 168, allowed for 10.00
(See page 143, of this record for voucher.)

Item 169, allowed for 71.00
(See page 144 of this record for voucher).

Item 170, allowed for 42.45
(See pages 144, 145 of this record for voucher).

Item 171, allowed for 77.00
(See page 146 of this record for voucher).

Item 172, disallowed as not necessary expenditure, being for 100 printed copies of opinion in Central Improvement Company vs. Cambria Steel Company.

Item 173, disallowed, voucher fails to show what it was that was printed, although claim says briefs, and no evidence in support was offered. (For voucher, see this record, page 147.)

73 Amt. Fwrd. $294,759.45

Item 174, allowed for 9.90
The Master finds suggestions must mean something in the nature of briefs (see voucher, this record, page 148).

Item 175, disallowed as not necessary expense incurred in the litigation. (See voucher, page 149 of this record).

Item 176, allowed for 6.30
(See voucher, page 151 of this record).

Item 177, disallowed as not necessary expense in Cambria litigation (see voucher, page 152 of this record).

Item 178, allowed for 19.80
(See voucher, page 153 of this record).

Item 179, allowed for 9.00
(See voucher, page 153 of this record).

Item 180, disallowed. Master finds that although the testimony shows that Mr. Willey gave a large amount of time as an expert accountant in connection with this Cambria litigation, still he was auditor of the Guardian Trust Company on regular monthly salary; the Master finds that he would have drawn that salary whether he gave his time to the Cambria litigation or not.

Item 181, disallowed. The Master finds that although Miss Gott did a large amount of work in connection with prepartion for hearings before the Master in the Cambria case, as she was in the monthly employment of the Guardian Trust Company she would have received her salary of $60.00 per month whether she had given her time to the preparation of these documents prepared under the supervision of Mr. Willey in the Cambria litigation or not.

Amt. Fwrd.

74

$294,804.45

Items 182 to 199, inclusive, disallowed for same reasons as other Mecartney items on the ground stated under Item 135.

Item 200, allowed for 5.00
(See voucher 154-D of this record).

Item 201, disallowed for same reasons as other Mecartney items, on ground stated under Item 135.

Item 202, allowed for 5.00
(See voucher, page 156 of this record).

Item 203, allowed for 175.00
(See voucher, page 157 of this record).

Item 204, allowed for 175.00
(See voucher, page 158 of this record).

Item 205, allowed for 175.00
(See voucher, pages 160-162 of this record).

Item 206, allowed for 150.00
(See voucher, pages 163-165 of this record).

Item 207, allowed for 175.00
(See voucher, page 166 of this record).

Item 208, allowed for 112.50
(See voucher, pages 167-168 of this record).

Item 209, allowed for 43.75
(See voucher, page 169 of this record).

Item 210, allowed for 175.00
(See voucher, pages 169 and 170 of this record).

In allowance of above items, 200 to 210 inclusive, being premiums on bonds, the Master relies as an authority on decision of Mr. Chief Justice Taft rendered May 12, 1924, in case of Charles B. Newton vs. Con. Gas Company of New York, reported in U. S. Supreme Court advance opinions #15, 1923-1924, page 537.

Items 211 to 245, inclusive, disallowed, Mecartney items, on the grounds stated under Item 135.

Amt. Fwrd.

75 $295,995.70

Item 246, disallowed as not necessary expense.

Item 247, disallowed as not necessary expense.

Item 248, disallowed as not necessary expense.

Item 249, disallowed as not necessary expense.

Item 250, disallowed as not necessary expense.

Items 251 to 411, inclusive, disallowed, Mecartney items, on grounds stated under Item 135.

Item 412, allowed for 28.00
(See voucher, page 117 of this record).

Item 413, allowed for 60.00
(See voucher, page 117 of this record).

Item 414, allowed for 65.00
(See voucher page 117 of this record).

Item 415, allowed for 105.50
(See voucher, page 175 of this record).

Item 416, allowed for 74.00
(See voucher, page 176 of this record).

Item 417, allowed for 25.00
(See voucher, page 124 of this record).

Item 418, allowed for 2.37
(See voucher, page 125 of this record).

Item 419, disallowed as not necessary expense.

Item 420, allowed for ..... .75
(For Voucher, see page 178 of this record).

Item 421, allowed for 146.05
(For voucher, see page 179 of this record).

Item 422, allowed for..... 18.00
(See voucher, page 179 of this record).

$296,520.37

Item 423, disallowed as not necessary expense.

Item 424, disallowed as not necessary expense.

Item 425, disallowed as not necessary expense.

76 Item 426, disallowed, payment of $200.00 to Clephane & Clephane, Washington attorneys, allowed under Item No. 131 seems to make this unnecessary expense.

Item 427, disallowed as unnecessary expense.

Item 428, disallowed. Voucher shows this includes expense of J. A. Prescott to New York. It is impossible for the Master to find what part of this item is properly allowable and hence Master disallows the entire item.

Items 429 to 439, inclusive, credits on Mecartney expense items, all stricken from the claim as taken into the account in the Mecartney judgment.

Supplemental Claim.

Item 440, being a credit for $1,482.55 on costs in United States Circuit Court of Appeals paid to Gates & English, stricken from the claim as Master has elsewhere in this report declined to re-tax these costs in the United States Circuit Court of Appeals.

Item 441, disallowed. Neither voucher nor proof show what part of the services for which this voucher was paid were rendered by Wollman, Solomon & Cooper in protecting the $132,000.00 Claim for switching charges assigned by the Kansas City, Pittsburg & Gulf Railroad to the Trust Company as collateral and what part of such services were rendered to Francis M. Black and Wash Adams for other services rendered to those receivers. (For voucher and bill attached, see page 733 of this record.)

Item 442, disallowed for same reaosn as Item 441.

Item 443, disallowed as not necessary expense. The Master finds that this expense might have been avoided by the Trust Company as Mr. Mecartney on prospective employment would pro-
77 bably have made the report without charge if demanded and in view of the substantial judgment of the Supreme Court allowed in full by this Master without regard to reasonablenss of service charges allowed, the Master considers himself bound by such judgment in view of the terms of the order of appointment and memorandum opinion of Judge Van Valkenburgh.

The Master therefore finds that no allowance should be made in equity for this preliminary report of Mr. Mecartney and expenses incident thereto.

The Master allows and finds as costs between solicitor and client under Group II in favor of Henry C. Flower, Receiver of Guardian Trust Company and against Kansas City Southern Railway Company and Cambria Steel Company the total amount of $296,520.37

Claim of H. C. Flower, Receiver, prays for interest on all items in Group II from date of disbursement of each item at six per cent. The Master, however, is of opinion that in equity allowance of interest on claims under Group II is in the discretion of the Master sitting as a Master in Chancery. In view of the allowance of substantial costs in this entire report and of all the surrounding circumstances in this protracted litigation; of the delays in this matter of taxation of costs not chargeable against the Southern Company or Cambria Company; and in view also of the fact that interest would not be allowed at law on these claims for many reasons, including lack of demand and the unliquidated character of claim, the Master therefore finds and recommends that interest should be awarded on claims allowed under Group II only from the date of confirmation of this report, if confirmed, by the United States District Court, and from the date of such confirmation until the payment of such costs, at six per cent interest, and no more.

78 The Master has not seen fit in this report to burden this court with citations of authorities or by lengthy discussion of the legal questions involved. The Master has carefully read all opinions offered in evidence by reference, or cited in connection with this litigation. The Master has read all the cases referred to in the memorandum opinion and has carefully read the briefs of counsel and patiently listened to their oral arguments and sends up with this report all briefs of counsel filed before the Master.

The Master also sends up with this report Volumes I and II of the testimony taken by him;

Exhibit "A", claim of H. C. Flower, Receiver, filed October 22, 1923;

Exhibit "B", motion to require Trust Company to restate account filed December 1, 1923;

Exhibit "C", motion for leave to offer evidence, filed February 8, 1924;

Exhibit "D", supplemental claim of H. C. Flower, Receiver, filed February 15, 1924; also

Guardian Trust Company's Exhibit 5-A, 5-B and 5-C, being, respectively, Volumes I, II and III of printed transcript of record on appeal, entitled, Guardian Trust Co., et al., Appellants, vs. Edward A. Shedd and Charles B. Shedd, Appellees, in U. S. Circuit Court of Appeals, and Exhibit 6, be-

ing Appellant's printed abstract of the record on appeal in the Supreme Court of Missouri in cause entitled, Harry S. Mecartney, Respondent, vs. Guardian Trust Company, Appellant.

From the memorandum opinion of his Honor, Judge Van Valkenburgh, filed June 20, 1923, in pursuance of which the order appointing the undersigned Special Master in this case was made, is taken the following:

79 "There are also in dispute or at least undetermined, some matters involved in the principal judgment which counsel thought might be substantially settled by agreement. This court deems it best that the entering of the decree should await the finding upon all the items above referred to. All such matters are therefore referred to Henry D. Ashley, Esquire, the Special Master heretofore appointed and acting in this cause, with directions to report his findings and conclusion, with all reasonable despatch".

The Master has had hearings and taken testimony directed to the matters in the principal judgment referred to. The matters in dispute between counsel are as follows:

Counsel for the receiver of the Guardian Trust Company claims that notwithstanding the decree of June 25, 1910, allowing six per cent interest on note for $7,162.40, dated October 23, 1899, and notwithstanding the fact that said decree has been affirmed by the United States Circuit Court of Appeals as to paragraph IV of said decree and such decree was affirmed by the Supreme Court of the United States it is not now too late to correct the error made in not figuring interest on such note at eight per cent, the rate of interest which said note actually calls for, said fact being admitted by counsel for both sides. On this matter the Master finds that the final decree should credit the receiver of the Guardian Trust Company in this regard by allowing to said Guardian Trust Company two per cent simple interest on $7,162.40 from October 23, 1899 to the date of entry of final decree, without any compounding of iterest. In coming to this conclusion the Master calls attention to the following stipulation made between the parties to this controversy on the 15th of April, 1916; "It is agreed that this is an approximation only, and that it shall be checked and verified as soon as possible, and that any errors of computation which

80 have been made are subject to correction, and that an adjustment will be made as between the parties by paying any balance found to be due from one to the other. (See page 714 of this record).

Another matter in dispute affecting the principal judgment is as follows: on April 15, 1916, the Kansas City Southern Railway Company paid by draft $821,623.28 and gave credit as follows: "By receipt by Guardian Trust Company as its own to the special deposit referred to in paragraph V of the decree of the Circuit Court and directed by the Circuit Court of Appeals to be deducted from the amount of the judgment $40,001.25. By interest actually earned on said special deposit to this date $17,268.01".

It is now admitted by counsel for all parties to this controversy that this credit of interest actually earned should have been $21,907.38, for the following reasons:

On October 25, 1902, there was actually earned on said special deposit interest in the sum of $737.02; that on April 15, 1916, there was actually earned on said special deposit the sum of $3,874.47.

The Master finds that there should be credited to the Kansas City Southern Railway Company on the final judgment the sum of these two payments of interest, with interest on said aggregate sum from April 15, 1916, to the date of entering of final decree.

For the purpose of assisting the court in preparation of the final decree the Master calls attention to statement of securities by witness H. B. Leavens, Assistant to Receiver of Guardian Trust Company, set out at page 991 of this record and also to liquidation divided by Northern Townsite Company, reported by witness H. B. Leavens and set forth at page 992 of this record.

Respectfully submitted.

HENRY D. ASHLEY
Special Master.

Filed in District Court of United States, September 15, 1924.

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81 "Exhibit A."

October 15, 1923.

Cambria Steel Company, and Kansas City Southern Railway Company, Debtors.

To Henry C. Flower,
Receiver of Guardian Trust Company.

To costs and expenses incurred and paid by Guardian Trust Company and its Receiver in resisting the various

claims, charges, and demands made against it in Cambria Steel Company—Guardian Trust Co.—Kansas City Southern Railway Company litigation, and the various bills and petitions filed by, for, or at the instance of Kansas City Southern Railway Company, in its own name and in the name of others, in aid of said claims and demands, as follows:

Note: Interest is claimed by Guardian Trust Company on each of the disbursements enumerated below, at the rate of six (6%) per cent. per annum from date of each disbursement until reimbursement is made.

References to voucher numbers are to vouchers of Guardian Trust Company and its various Receivers, on file in the office of Henry C. Flower, Receiver.

References to "Mecartney items" are to expense bills of H. S. Mecartney annexed as exhibits to his petition in his suit vs. Guardian Trust Company, in Circuit Court of Jackson County, Missouri, Cause No. 38412, judgment in which was affirmed by Supreme Court of Missouri in 274 Mo. 224—see printed abstract of the record in said case in Supreme Court of Missouri, filed herewith.

Items in Group I. are claimed as costs taxable as between party and party; items in Group II. are claimed as costs as between solicitor and client.

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Group I.

Costs As Between Party And Party.

To fees paid from time to time to Hon. Shannon C. Douglass for services as Special Master in Cambria Steel Co.-Guardian Trust Co.-Kansas City Southern litigation, as follows:

Item No.	1905.		
(1)	Sept. 18, 1908.	Voucher No. 957	$ 2,000.00
(2)	May 1, 1910.	Voucher No. 2324	$ 1,500.00.
(3)	Dec. 29,	Voucher No. 2726	$ 5,053.50.
		Total	$ 8,553.50

To fees paid from time to time Harry A. Jetmore, official reporter for Shannon C. Douglass, Esq., Special Master, for taking and transcribing testimony and proceedings before Special Master in Cambria Steel Co.-Kansas City Surburban Belt R. R. Co.-Kansas City Southern Ry. Co.-Guardian Trust Co. litigation, as follows:

	1903			
(4)	July 14,	Voucher No. 317	$	437.73.
(5)	Dec. 5,	Voucher No. 448		168.90.
	1904			
(6)	Feb. 16,	Voucher No. 510		77.16.
(7)	June 30,	Voucher No. 621		296.87.
(8)	Aug. 1,	Voucher No. 660		26.17.
(9)	Oct. 27,	Voucher No. 719		43.16.
	1905			
(10)	March 1,	Voucher No. 831		96.00.
(11)	March 30,	Voucher No. 845		209.17.
(12)	April 20,	Voucher No. 867		132.50.
(13)	May 15,	Voucher No. 890		124.92.
(14)	July 1,	Voucher No. 914		515.50.
(15)	July 11,	Voucher No. 923		137.75.
(16)	Aug. 14,	Voucher No. 940		172.08.
(17)	Aug. 25,	Voucher No. 944		252.25.
(18)	Sept. 12,	Voucher No. 953		54.00.
(19)	Oct. 4,	Voucher No. 968		504.33.
(20)	Nov. 14,	Voucher No. 1000		308.58.
(21)	Dec. 16,	Voucher No. 1023		346.88.
	1906.			
(22)	Jan. 9,	Voucher No. 1031		212.58.
		Amount forwarded	$	4,425.53

Item No.				
		Amount forwarded (H. A. Jetmore)	$	4,425.53
	1906.			
(23)	Jan. 22,	Voucher No. 1035		342.00.
(24)	Feb. 13,	Voucher No. 1040		193.05.
(25)	Feb. 21,	Voucher No. 1048		159.56.
(26)	March 25,	Voucher No. 1075		180.50.
(27)	March 27,	Voucher No. 1079		315.58.
(28)	March 29,	Voucher No. 1080		208.60.
(29)	April 25,	Voucher No. 1097		614.78.
(30)	Sept. 5,	Voucher No. 1171		214.25.
	1907.			
(31)	April 1,	Voucher No. 2032		15.83.
(32)	Sept. 28,	Voucher No. 2236		5.00.
		Total		$ 6,674.70

(33) To Brown, Barnett & Adams, for stenographic services rendered in taking testimony before Special Master on Dec. 20, 21, 22, 1904, in Cambria Steel

Co. matter, and transcribing same—Mecartney Item No. 6.....$ 22.50.

$ 22.50

Total fees reporting testimony before Master, etc..... $ 6,697.20

Other Court Costs. Exemplified Copies Of Records, Etc., As Follows:

(34)	1904 Jan.	2,	To Adelaide Utter, Clerk, for certified copy intervening petition Knott and Swinney, Receivers K. C. Sub. Belt R. R. Co., vs. Guardian Trust Co., and of order made thereon,.....Voucher	477....	$	1.15.
(35)	1905. April	1,	To A. Utter, Clerk, copy order case No. 2468.....Mecartney item	25...		0.55.
(36)	April	1,	To docket fee, Guardian Trust Co. vs. K. C. S. Ry. Co..... Mecartney item	25...		3.00.
(37)	July	10,	To A. Utter, Clerk, copy of decree of foreclosure and sale, for use in record in Cambria case,.....Mecartney item	26...		15.50.
(38)	July	10,	To A Utter, Clerk, for copy affidavit T. L. Chadbourne filed in Bierce vs. Guardian Tr. Co., offered in evidence before Master in Cambria case,..... .....Mecartney item	38...		1.65
(39)	July	10,	To A. Utter, Clerk, for copy records offered in evidence before Special Master in Cambria case,...Mecartney item	38...		2.15
			Amount forwarded.....		$	24.00

84 Other Court Costs, Etc. Continued.

			Amount forwarded.....		$	24.00
Item No.	1905			Mecartney Item No.		
(40)	Sept.	14,	To cash paid D. W. Amram, attorney Philadelphia, for certified copy bill of complaint in suit filed by K. C. S. Ry. Co. vs. its reorganization committee to enjoin settlement with deGoeijen,.....	42...	$	12.75.
(41)	Sept.	23,	To Adelaide Utter, Clerk, transcript of record for use in cases No. 2464-5 on appeal from injunction order sued out by K. C. S. Ry. Co. vs. Guardian Trust Co.,.....Voucher No.	950...		200.70.
(42)	Sept.	28,	To J. D. Jordan, Clerk U. S. Circuit Court of Appeals, docketing appeal from injunction order,.....	52...		25.00.

(43)	Oct.	6,	To J. D. Jordan, Clerk U. S. Circuit Court of Appeals, printing fees for printing record on appeal from order of temporary injunction obtained by K. C. S. Ry. Co. vs. Guardian Trust Co.,	52...	547.00
(44)	Nov.	13,	To certified copy final judgment in suit First Natl. Bank vs. Guardian Trust Co., etc.,	52...	2.00.
(45)	Dec.	10,	To fee paid A. Utter, Clerk, for certified copy of order	68...	3.35.
(46)	Dec.	20,	To J. J. Linton, for notarial services in taking deposition at Detroit, Mich. of witness R. B. Cone, filed in Cambria case,	68...	20.00
	1906				
(47)	Jan.	3,	To Jennie T. Powers, shorthand reporter, New York City, for certified copy transcript of depositions taken in New York of Herman Sielcken et al.,	71...	65.20.
(48)	April	10,	To A. Utter, Clerk, for certified copy record entries in suits #2464-2466, for use as evidence before Special Master,	86...	4.80
(49)	April	12,	To A. Utter, Clerk, certified copy bill of complaint in cause #2464, ordered by H. A. Jetmore for incorporation in record before Special Master,	86...	0.95
(50)	May	8,	To Miles F. Powers, New York City, Notary Public, notarial services in taking depositions in New York of Herman Sielcken et al.,	86...	10.00
(51)	May	14,	To certified copies of sundry affidavits and Special Master's report,	86...	13.00
(52)	June	2,	To A. Utter, Clerk, for copy petition, order, notice, etc	103...	7.25
			Amount forwarded		$ 1,125.30

85 Other Court Costs, Etc. Continued.

			Amount forwarded		$ 1,125.30
Item No.	1906.			Mccartney Item No.	
(53)	June	20,	To J. D. Jordan, Clerk U. S. C. C. A., for copy of opinion on injunction appeal in suit K. C. S. Ry. Co. vs. Guardian Trust Co.,	99...	5.00.
(54)	July	2,	To docket fee suit Guardian Trust Co. vs. K. C. S. Ry. Co.,	103...	5.00.
(55)	July	13,	To W. B. Lightburne, shorthand reporter for Special Master, for reporting oral arguments made before Special Master,	103...	50.00.
(56)	Aug.	18,	To Geo. F. Sherritt, Clerk U. S. Court, for copy of report of sale and order confirming sale of Union Terminal R. R. Co.,	103...	4.50

(57)	1907. Jan. 5,	To W. B. Lightburne, shorthand reporter, balance due for services in reporting oral arguments made before Special Master,.....Voucher No.	1908...		170.80.
(58)	Dec. 14,	To Oscar Hockland, Clerk, for copy of record in State Court suits vs. K. C. S. Ry. Co.,.....	141...		4.50.
(59)	1908. Jan. 8,	To A. Utter, Clerk, for copy supplemental bill of complaint K. C. S. Ry. Co. vs. Guardian Trust Co. in Cambria suit,...	140...		12.35.
(60)	Jan. 29,	To Brown, Adams & Brown, court reporters, for reporting arguments on application for temporary injunction of K. C. S. Ry. Co. vs. Guardian Trust Co.,	144...		107.00.
(61)	March 23,	To Brown, Adams & Brown, shorthand reporters, balance due account services last above,.....	154...		10.50.
(62)	March 26,	To A. Utter, Clerk, for copy of appearance docket entries in K. C. Sub. Belt R. R. Co. foreclosure suit #2468,.....	150...		5.00.
(63)	March 26,	To A. Utter, Clerk, copy petition T. T. Crittenden, Receiver, for leave to transfer real estate of Central Improvement Co.,.....	150...		2.25.
(64)	March 26,	To A. Utter, Clerk, copy order overruling demurrer and order of temporary injunction of Judge McPherson in Cambria suit,.....	150...		0.95
(65)	March 26,	To A. Utter, Clerk, for copy petition of Crittenden, Receiver, for instructions of court as to management of property of Central Improvement Co., in Cambria suit,.....	150...		2.05.
		Amount forwarded.....			$ 1,504.70

88 Other Court Costs, Etc. Continued

		Amount forwarded.....			$ 1,504.70
Item No.	1908.		McCartney Item No.		
(66)	March 26,	To A. Utter, Clerk, for copy order in Cambria suit appointing T. T. Crittenden Receiver of Central Improvement Co.,.....	159...		0.85.
(67)	March 26,	To A. Utter, Clerk, for copy order denying motion to dissolve injunction order and striking motion of Guardian Trust Co. from files, entered in Cambria suit,	159...		1.40.
(68)	April 2,	To J. D. Jordan, Clerk U. S. C. C. A., fees for printing and preparing record on			

			appeal, in suit Guardian Trust Co., Appellant, vs. K. C. Southern Ry. Co., Appellee,.....Voucher No. 2311...	1,070.00.
(69)	April	10,	To A. Utter, Clerk, for copy of opinions filed in Cambria suit on March 30th and April 8, 1908,.....Voucher No. 2319...	4.20.
	1910.			
(70)	June	29,	To A. Utter, Clerk, for copy of decree in case #2468,.....Voucher No. 2663...	6.65.
(71)	Sept.	30,	To A. Utter, Clerk, making certified transcript of record on appeal from order of temporary injunction sued out by K. C. S. Ry. Co. vs. Guardian Trust Co.,.....Voucher No. 2692...	764.35.
(72)	Oct.	26,	To J. D. Jordan, Clerk U. S. C. C. A., account deposit for Clerk's costs on appeal entitled Central Improvement Co., and Guardian Trust Co. vs. Cambria Co.,.....Voucher No. 2698...	50.00.
(73)	Oct.	28,	To J. D. Jordan, Clerk U. S. C. C. A., balance due account printing record in appeal last above,.....Voucher No. 2700...	910.00.
	1911.			
(74)	Feb.	7,	To Gates & English, to reimburse them for fees paid for sundry certified copies of records in Cambria case,..Voucher No. 2743...	35.00.
(75)	May	9,	To A. Utter, Clerk, for certified copies of records in Cambria case, Voucher No. 2762...	3.10.
	1912.			
(76)	Nov.	19,	To J. D. Jordan, Clerk, for copy opinion United States Circuit Court of Appeals, Voucher No. 2998...	5.00.
	1913.			
(77)	May	7,	To J. D. Jordan, Clerk, for additional deposit to secure Clerk's costs in appeals Central Improvement Co. and Guardian Trust Co. vs. Cambria Co.,..... Voucher No. 3057...	40.00.
(78)	Dec.	17,	To J. D. Jordan, Clerk U. S. C. C. A., for copy of opinion on appeals last above, ...Voucher No. 3128...	5.00.
			Total carried forward.....	$ 4,400.25

Total carried forward..... $ 4,400.25

Credits Against Items Last Above:

Item No.				
	1906.			
(79)	Aug.	18,	By amount refunded by Clerk U. S. C. C. A. on account costs injunction appeal, Mecartney Credit Item No. 7.....$ 45.70.	

	1907.				
(80)	April	27,	By amount refunded account costs injunction appeal, Mecartney Credit Item No. 10	$935.06.	
			Total Credits	$980.76	
					890.76
			Total Other Court Costs, etc., after deducting Credits		$ 3,419.49

Group II

Costs And Expenses As Between Solicitor And Client.

Counsel Fees.

Item No.				Voucher No.	
	1900.				
(81)	Sept.	22,	To amount paid Trimble & Braley, Attorneys, as retainer fee in Cambria Steel Co., case,	*See Foot-Note.	$ 1,000.00.
	1902.				
(82)	Oct.	8,	To three-fourths (¾) of $7125.00, allowed to Trimble & Braley by Judge Thayer, and paid under order of court entered by Judge Thayer in Bierce case, dated October 4, 1902, discharging Receiver of Guardian Trust Co., covering services rendered in Cambria Steel Co. litigation during period of receivership of Judge F. M. Black and Wash Adams, November 30, 1900, to October 4, 1902,	146...	5,343.75.
(83)	Oct.	31,	To J. McD. Trimble,	30...	150.00.
(84)	Nov.	29,	To J. McD. Trimble,	68...	500.00.
(85)	Dec.	31,	To J. McD. Trimble,	131...	500.00.
(86)	1903. Jan.	31,	To J. McD. Trimble,	154...	500.00.
			Amount forwarded		$ 7,993.75

*Note: For item No. (81) see Guardian Trust Co. Expense Ledger No. 4, Page 126.

88 Counsel Fees Continued.

			Amount forwarded		$ 7,993.75

Item No.				Voucher No.	
	1903.				
(87)	Feb.	28,	To J. McD. Trimble,	176...	500.00.
(88)	March	31,	To J. McD. Trimble,	205...	500.00.
(89)	April	30,	To J. McD. Trimble,	244...	500.00.
(90)	May	31,	To J. McD. Trimble,	273...	500.00

(91)	June 30,	To J. McD. Trimble,.....	299...		500.00.
(92)	July 30,	To J. McD. Trimble,.....	325...		500.00.
(93)	Sept. 3,	To J. McD. Trimble,.....	358...		500.00.
(94)	Sept. 29,	To J. McD. Trimble,.....	374...		500.00.
(95)	Oct. 31,	To J. McD. Trimble,.....	401...		500.00.
(96)	Nov. 30,	To J. McD. Trimble,.....	439...		416.66.
(97)	Dec. 31,	To J. McD. Trimble,.....	473...		416.66.
	1904.				
(98)	Jan. 30,	To J. McD. Trimble,.....	492...		416.66.
(99)	Feb. 29,	To J. McD. Trimble,.....	513...		416.66.
(100)	March 31,	To J. McD. Trimble,.....	537...		416.66.
(101)	April 30,	To J. McD. Trimble,.....	564...		416.66.
(102)	May 31,	To J. McD. Trimble,.....	592...		416.66.
(103)	June 30,	To J. McD. Trimble,.....	618...		416.66.
(104)	July 31,	To J. McD. Trimble,.....	638...		416.66.
(105)	Aug. 31,	To J. McD. Trimble,.....	665...		416.66.
(106)	Sept. 30,	To J. McD. Trimble,.....	686...		416.66.
(107)	Oct. 25,	To J. McD. Trimble,.....	716...		416.66.
(108)	Dec. 8,	To H. S. Mecartney, payment on account,	769...		5,000.00.
	1905.				
(109)	June 31,	To Wash Adams, in settlement his bill for services in Cambria case,.....	*908...		6,000.00.
		*See Guardian Trust Co. Cash Book, Page 119.			
(110)	Sept. 14,	To fee paid D. W. Amram, Attorney, Philadelphia, for examining court files and obtaining copy of records in suit K. C. Southern Ry. Co. vs. Members Reorganization Committee,.....	Mecartney No. 42...		10.00.
(111)	Sept. 27,	To H. S. Mecartney, payment on account,	960...		5,000.00.
		Amount forwarded.....			$ 33,503.67

89 Counsel Fees Continued.

Amount forwarded..... $33,503.67

Item No.			Voucher No.	
	1905.			
(112)	Nov. 16,	To C. O. Tichenor, for consultation and written opinion as to liability K. C. S. Ry. Co. for debt of Guardian Trust Co. in Cambria suit, Mecartney item No.	55...	500.00.
(113)	Dec. 28,	To Sullivan & Cromwell, Attorneys New York City, for assisting at taking of depositions there of witnesses Sielcken and Hawkes, Mecartney item No.	68...	150.00.
	1906.			
(114)	Feb. 13,	To H. S. Mecartney, payment on account,	1041...	5,000.00.
(115)	June 1,	To C. H. Aldrich, for written opinion in Cambria case,....Mecartney item No.	117...	350.00

(116)	Aug.	15,	To H. S. Mecartney, payment on account, 1164...	5,000.00.
	1907			
(117)	July	31,	To H. S. Mecartney, payment on account, 2190...	7,500.00.
	1908.			
(118)	March	27,	To fee paid James C. Jones, of St. Louis, for consultation and advice in Cambria suit,.....Mecartney item No. 163...	250.00.
(119)	March	28,	To Gates & English, retainer..... 2309...	3,000.00.
	1909.			
(120)	June	25,	To Gates & English, payment on account, 2500...	4,000.00.
(121)	Dec.	14,	To Gates & English, payment on account, 2569...	2,000.00.
	1910.			
(122)	Aug.	1,	To Gates & English, payment on account, 2673...	3,000.00.
	1911.			
(123)	Feb.	15,	To Gates & English, payment on account, 2747...	4,000.00.
(124)	Oct.	27,	To D. J. Haff, services on appeal,..... 2824...	1,000.00.
	1912.			
(125)	Jan.	16,	To Gates & English, payment on account, 2881...	4,000.00.
(126)	Jan.	18,	To D. J. Haff, account services on appeal, 2881...	4,000.00
(127)	July	31,	To Amount paid Trimble & Braley, in satisfaction of final judgment rendered August 5, 1912, for $12,580.41, in suit Trimble & Braley vs. Guardian Trust Co., filed Aug. 40, 1905, in Circuit Court of Jackson County, Missouri, Cause No. 25446, reported in 244 Missouri 228 which suit was brought to recover for sundry legal services rendered to Guardian Trust Company the items recovered for services rendered in Cambria Steel Co.—K. C. Southern Ry. Co.—Guardian Trust Co. litigation being as follows:	

(Item No. 127 continued on next page.)

Amount forwarded.....$ 74,753.67

90 Counsel Fees Continued.

Amount forwarded .....$ 74,753.67

Item No. (127) Continued. Voucher No.

For services rendered by Trimble & Braley in suit of Cambria Steel Co. prior to appointment, on November 30, 1900, of F. M. Black as Receiver of Guardian Trust Co., less retainer paid Sept. 1900, of $1,000.00..$2,250.00

Interest paid by Guardian Trust Co. on above amount of $2250.00 from date of

			filing of Trimble & Braley suit, on August 30, 1905, to August 5, 1912, date of satisfaction of judgment, at six (6%) per cent..	935.24	
				$3,185.24	
			For services rendered by Trimble & Braley prior to appointment, on November 30, 1900, of F. M. Black as Receiver of Guardian Trust Co., in protecting interests of said Trust Co., in respect to its claims in Cambria suit, in four suits filed by Kansas City Southern Railway Company in name of Provident Life & Trust Co., Trustee, to foreclose railroad mortgages executed by Kansas City Suburban Belt Railroad Co. and its constituent companies.....	$4,500.00	
			Interest paid by Guardian Trust Co. on above sum of $4500.00 from August 30, 1905, date of filing of Trimble & Braley suit, to August 5, 1912, date of satisfaction of final judgment, at six (6%) per cent....	1,870.50	
			Total Item No. (127).....	2954...	9,555.74.
Item No.					
1913.					
(128)	Feb.	21,	To Gates & English, payment on account,	3034...	7,500.00.
(129)	Feb.	21,	To D. J. Haff, account services on appeal,	3035...	1,000.00.
1914.					
(130)	April	1,	To Gates & English, payment on account..	3154..	5,000.00.
(131)	April	9,	To Clephane & Clephane, services in U. S. Supreme Court,.....	3155...	200.00.
(132)	Nov.	10,	To F. W. Lehmann, retainer account services on appeal,.....	3189...	1,000.00.
1915.					
(133)	Nov.	9,	To Gates & English, payment on account,	3238...	5,000.00.
			Amount forwarded.....		$104,009.41

Counsel Fees Continued.

Amount forwarded..... $104,009.41

Item No.				Voucher No.	
1917.					
(134)	Dec.	2,	To Fred W. Lehmann, St. Louis, Mo., per order U. S. District Court made November 24, 1917, for balance due account services rendered in briefing and arguing appeals in Cambria Steel Co. suit in United States Circuit Court of Appeals and in United States Supreme Court,.....	896...	15,000.00.

1918.					
(135) May	11,	To H. S. Mecartney, in satisfaction of final judgment rendered by Circuit Court of Jackson County, Missouri, in suit Mecartney vs. Guardian Trust Co., affirmed by Supreme Court of Missouri in 274 Missouri 224, said suit being to recover balance due account professional services rendered December, 1904, to March 25, 1908, in Cambria Steel Co. suit.....$135,013.56			
		Less sundry expense items enumerated in itemised statement annexed to plaintiff's petition in said suit, paid by Guardian Trust Co. and charged to Kansas City Southern Ry. Co. elsewhere in this statement of account,.....$ 7,745.07			
				1203...	127,268.49.
1922.					
(136) Sept.	15,	To H. S. Mecartney, in satisfaction of decree United States District Court per mandate United States Circuit Court of Appeals, for expenses incurred and services rendered to Guardian Trust Co. in United States Circuit Court of Appeals subsequent to March 25, 1908, in Cambria Steel Co. suit, all as more fully shown in opinion of United States Circuit Court of Appeals reported in 280 Federal 64,.....	3371...		47,000.00.
(137) Oct.	27,	To George H. English, as surviving partner of firm of Gates & English, per order made by United States District Court covering balance in full account services rendered in Cambria Steel Co. suit.....	3385...		5,859.40.
		Total Counsel Fees.....$			299,137.30.

92 Cash Paid For Printing Briefs, Etc.

Item No.			Mecartney Item No.		
1905.					
(138) April	1,	To Riley Publishing Co., printing cross-bills, Cambria case,.....	25...	$	42.75.
(139) June	12,	To Riley Publishing Co., printing answer to ancillary bill and answer to intervening petition,.....	34...		121.25.
(140) June	19,	To Barnard & Miller, printing brief, case vs. K. C. Southern Ry. Co.,.....	36...		104.00.

(141)	Sept. 18,	To Barnard & Miller, printing brief, injunction matter before Judge Philips,..		44...	12.75.
(142)	Nov. 20,	To Barnard & Miller, printing 108 copies of opinion of C. O. Tichenor,.....		58...	20.50.
(143)	Nov. 29,	To Barnard & Miller, printing brief for appellant, case vs. K. C. S. Ry. Co.,..		62...	45.00.
(144)	Dec. 29,	To Barnard & Miller, printing cross-bill in Cambria case,.....		69...	29.25.
	1906.				
(145)	Jan. 17,	To printing reply brief in injunction suit vs. Kansas City Southern Ry. Co.,.....		75...	9.75.
(146)	May 8,	To Franklin Hudson Publishing Co.,.....		86...	17.00.
(147)	May 8,	To Franklin Hudson Publishing Co.,.....		86...	12.00.
(148)	May 8,	To Frank T. Riley Publishing Co., printing answer and pleas to Second Amended and Supplemental Ancillary Bill,.....		86...	9.10.
(149)	May 8,	To Franklin Hudson Publishing Co.,.....		86...	11.00.
(150)	May 8,	To Franklin Hudson Publishing Co.,.....		86...	5.25.
(151)	May 31,	To Barnard & Miller, printing argument case Cambria Steel Co. vs. Belt R. R. Co., also argument on issues of intervention,.....		92...	123.00.
(152)	June 18,	To Barnard & Miller, printing analysis of bill for Special Master,.....		97...	31.50.
(153)	June 18,	To Barnard & Miller, printing report in connection with negotiations for settlement,.....		98...	30.00.
	1907				
(154)	Feb. 13,	To Barnard & Miller, printing supplemental argument, Cambria Steel Co. vs. K. C. Sub. Belt R. R. Co.,.....		112...	57.75.
(155)	March 4,	To Barnard & Miller, balance account printing supplemental argument, Cambria Co. vs. K. C. Sub. Belt R. R. Co.,		113...	64.50.
(156)	March 4,	To Barnard & Miller, printing 66 copies of Supplemental Analysis of Item 15,		114...	4.50.
		Amount forwarded.....			$ 750.85

Printing Briefs, Etc. Continued.

		Amount forwarded.....			$ 750.85
Item No.				Mecartney Item No.	
	1907.				
(157)	May 19,	To Barnard & Miller, printing suggestions for plaintiff in State Court cases, outlining petition, etc.,.....$10.50 Printing Supplemental Argument in Intervention and Cross-Bill, consolidation issue,.....85.00		122...	95.50.
(158)	June 17,	To Barnard & Miller, printing suggestions of plaintiff in support of motion to speed cause and in opposition to motion to stay,.....		123...	30.00.

(159)	June 18,	To Barnard & Miller, reprinting corrected Supplemental Argument on consolidation issue, etc.,	124...	28.00.
(160)	Dec. 18,	To Barnard & Miller, printing "Suggestions in Opposition," etc., also printing answer, Cambria case,	136...	29.50.
(161)	Dec. 19,	To Barnard & Miller, printing draft of decree, Cambria case,	137...	13.50.
	1908.			
(162)	Jan. 8,	To E. L. Mendenhall, printing brief on intervention of Kansas City Southern Ry. Co.,	141...	59.60.
(163)	Jan. 17,	To Barnard & Miller, printing affidavit of H. S. Mecartney,	142...	55.87.
(164)	March 26,	To Barnard & Miller, printing bill, Cambria case, etc.,	155...	32.07.
(165)	Nov. 9,	To John C. Bovard, printing brief filed with Special Master on liability of K. C. S. Ry. Co., also brief filed in U. S. Circuit Court of Appeals at St. Louis.....Voucher No.	2405...	55.95.
	1911.			
(166)	April 25,	To E. L. Mendenhall, printing brief in case Guardian Trust Co. vs. Cambria Steel Co. et al.,.....Voucher No.	2755...	24.60.
(167)	May 9,	To E. L. Mendenhall, printing brief in Cambria case,.....Voucher No.	2763...	6.00.
(168)	May 31,	To E. L. Mendenhall, printing reply brief, suit Guardian Trust Co., Appellant, vs. Cambria Steel Co. et al., Appellees, Voucher No.	2774...	10.00.
(169)	Nov. 9,	To E. L. Mendenhall, printing Additional Brief in above case (60 copies),..... Voucher No.	2846...	71.00.
(170)	Dec. 22,	To E. L. Mendenhall, printing 60 copies Reply Brief of Guardian Trust Co. to Supplemental Brief of K. C. S. Ry. Co. in suit Central Improvement Co. et al., Appellants, vs. Cambria Steel Co. et al., Appellees,.....Voucher No.	2867...	42.45.
		Amount forwarded.....		$ 1,304.89

94 Printing Briefs, Etc. Continued.

		Amount forwarded.....		$ 1,304.89
Item No.			Voucher No.	
	1911.			
(171)	Dec. 22,	To Smith-Grieves Typesetting Co., printing 75 copies Reply Brief, suit Central Improvement Co. et al. vs. Cambria Steel Co. et al.,.....	2868...	77.00.

	1912.				
(172)	Nov.	19,	To E. L. Mendenhall, printing 100 copies opinion of U. S. Circuit Court of Appeals, Guardian Trust Co. vs. Cambria Co., Central Improvement Co. vs. Cambria Co.,	2997...	21.00.
	1913.				
(173)	Feb.	24,	To Smith-Grieves Typesetting Co., 75 copies briefs, case #3489, Guardian Trust Co. vs. Cambria Co., case #3490, Central Improvement Co. vs. Cambria Steel Co.,	3037...	77.40.
(174)	Feb.	24,	To E. L. Mendenhall, printing Suggestions in suit Central Improvement Co. et al. vs. Cambria Steel Co. et al.,	3039...	9.90.
(175)	May	8,	To E. L. Mendenhall, printing opinion of U. S. Supreme Court in case of Northern Pacific Ry. Co. et al. vs. Jos. H. Boyd, for use in Cambria case,	3061...	18.75.
(176)	Aug.	21,	To E. L. Mendenhall, printing answer in case Guardian Trust Co. vs. Cambria Steel Co.,	3083...	6.30.
(177)	Dec.	20,	To E. L. Mendenhall, printing 150 copies opinion in case Central Improvement Co., Appellant, vs. Cambria Steel Co. et al., Appellees, and case Guardian Trust Co., Appellant, vs. Cambria Steel Co. et al., Appellees,	3130...	35.00.
	1914.				
(178)	May	14,	To E. L. Mendenhall, printing Notice of Motion, Motion to Dismiss, and brief, K. C. S. Ry. Co., Appellant, vs. Guardian Trust Co., Appellee,	3160...	19.80.
(179)	May	14,	To E. L. Mendenhall, printing 50 copies brief and argument of Guardian Trust Co. in opposition to petition for certiorari, case K. C. S. Ry. Co., Petitioner, vs. Guardian Trust Co. et al., Respondents,	3160...	9.00.
			Total Cash Paid for Printing Briefs, etc.,		$ 1,579.04

95 Payments to Expert Accountants.

Item No.

(180) to one-half (½) of salary paid by F. M. Black, Receiver of of Guardian Trust Co., to S. B. Willey, expert accountant, during period December 1, 1900, to June 1, 1901, during all of which period more than half of said Willey's time was necessarily consumed in preparing tabulations and data for use of Receiver and counsel touching state of the accounts between Guardian Trust Company and various companies involved in the Cambria suit, as follows:

½ of salary December 1, 1900 to June 1, 1901, at rate of $250.00 per month—6 months @ $125.00... $ 750.00 $ 750.00

To salary paid by Guardian Trust Co. and F. M. Black and Wash Adams, its Receivers, to S. B. Willey, expert accountant, during the period June 1, 1901, to December 1, 1904, during which period all of said Willey's time was consumed in examining records and books and in preparing tabulations therefrom for use of Receiver and counsel of Trust Co. at hearings in Cambria suit before Special Master, in assisting Guardian Trust Company and its Receivers in said Cambria suit, and in attendance upon such hearings as expert witness, to-wit:

June 1, 1901, to October 15, 1902, 16½ months, @ $150.00	$2,475.00		
Plus allowance for overtime acct. work on Cambria case, June, 1901	83.35		
	$2,558.35		
Less deduction for lost time during salary period of:			
June 1-15, 1902	$05.00		
June 15-30, 1902	30.00	35.00	
			2,523.35
October 15, 1902, to August 1, 1903, 9½ months, @ $300.00	$2,850.00		
Less deduction for lost time during salary period of Oct. 15-31, 1902,	30.00		
			2,820.00
August 1, 1903, to November 1, 1903, 3 months, @ $150.00	$ 450.00		450.00
November 1, 1903, to November 1, 1904, 12 months, @ $125.00,	$1,500.00		1,500.00
Salary for month of November, 1904, @ $50.00.	50.00		50.00
Total salary for period June 1, 1901, to December 1, 1904			7,343.35
Total Item No. (180)			$8,093.35

(Note: for voucher numbers see next page.)

Amount forwarded..... $8,093.35

Payment to Expert Accountants Continued.

Amount forwarded..... $ 8,093.35

Voucher Numbers for Item No. (180):

No. 46, 105, 132½, 147, 176, 190, 222, 240, 283, 294, 329, 331, 341, 365, 377, 416, 433, 458, 472, 499, 516, 545, 556, 586, 617, 643.

658, 693, 710, 744, 757, 791, 802, 828, 1, 23, 28, 55, 61, 80, 84, 106, 113, 179, 31, 51, 70, 101, 129, 143, 156, 169, 175, 192, 206, 229, 2[illegible], 262, 272, 293, 298, 315, 324, 342, 348, 365, 376, 390, 403, 430, 441, 458, 472, 488, 494, 509, 511, 528, 535, 554, 565, 582, 593, 612, 620, 632, 640, 655, 663, 682, 688, 713, 717, and 750.

Item No.

(181) To one-half (½) of salary of $80.00 per month paid by F. M. Black, Receiver of Guardian Trust Co., to Jennie L. Gott stenographer, during period December 1, 1900, to June 1, 1901, during which period more than one-half of her time was consumed in preparing tabulations and exhibits for use at hearings before Special Master and for the Receiver, in re Cambria suit,—

6 months @ $30.00 ..... $ 180.00

To full salary of said Jennie L. Gott of $60.00 per month paid by Guardian Trust Co. and F. M. Black and Wash Adams, its Receivers, during period June 1, 1901, to December 1, 1904, during which period all of her time was consumed in said work,—

42 months @ $60.00 ..... $2,520.00

Less deduction account time off during February, 1902 ..... 10.00

$2,510.00

2,510.00

Total Item No. (181) ..... $ 2,690.00

For Voucher Numbers for Item No. (181) see vouchers above enumerated, also Vouchers Nos. 20, 43, 94, 106, 745, and 749.

Amount forwarded $10,783.35

97 Payments To Expert Accountants Continued.

Amount forwarded $10,783.35

Item No.				Mecartney Item No.	
	1905.				
(182)	March 1,	To Frank B. Wilcox,		18...	450.00.
(183)	April 19,	To Frank B. Wilcox,		28...	50.00.
(184)	July 10,	To F. M. Cook (assisting S. B. Willey)...		38...	12.00.
(185)	July 10,	To F. M. Cook,	" "	38...	24.00.
(186)	July 10,	To F. M. Cook,	" "	38...	24.00.
(187)	Sept. 14,	To F. M. Cook,	" "	42...	24.00.
(188)	Sept. 14,	To F. M. Cook,	" "	42...	24.00.
(189)	Sept. 14,	To F. M. Cook,	" "	42...	24.00.
(190)	Sept. 14,	To F. M. Cook,	" "	42...	18.00.

(191)	Sept. 14,	To F. A. Wright, payment on account,...	42...		300.00.
(192)	Sept. 14,	To N. S. Doran,.....	42...		150.00.
(193)	Nov. 13,	To F. M. Cook,.....	52...		96.00.
(194)	Nov. 13,	To F. A. Wright,.....	52...		500.00.
(195)	Dec. 29,	To F. M. Cook,.....	68...		18.00.
	1906.				
(196)	Jan. 22,	To S. B. Willey,.....	77...		300.00.
(197)	Jan. 22,	To C. W. Hastings,.....	78...		100.00.
(198)	Jan. 22,	To F. A. Wright, account services.....	79...		458.00.
(199)	Feb. 8,	To F. A. Wright, account services.....	82...		100.00.
		Total Payments To Expert Accountants.....			$13,455.35

Premiums Paid on Bonds.

			Voucher No.	
	1905.			
(200)	Sept. 23,	To Hunter, Ridge & Bryant, Agents U. S. F. & G. Co., premium on appeal bond, on appeal from order of Judge Philips' granting an injunction restraining Guardian Trust Co. from prosecuting suit in State Court against Kansas City Southern Ry. Co.,.....	958...	5.00.
	1908.			
(201)	March 26,	To T. S. Ridge, prem. on bond for costs on appeal,.....Mecartney item	159...	5.00.
	1909.			
(202)	March 27,	To T. S. Ridge, prem. on appeal bond, 2nd year, case 2827, K. C. S. Ry. Co. vs. Guardian Trust Co.,.....	2479...	5.00.
		Amount forwarded.....		$ 15.00

98 Premiums Paid On Bonds Continued.

		Amount forwarded.....		$ 15.00
Item No.			Voucher No.	
	1910.			
(203)	Sept. 1,	To Globe Surety Co., prem. appeal bond Central Improvement Co. in K. C. Sub. Belt R. R. Co. suit.....$150.00 prem. appeal bond Guardian Trust Co. in Belt suit,..... 25.00	2686...	175.00.
	1911.			
(204)	Aug. 4,	To Globe Surety Co., prem. on above appeal bonds 2nd yr.,.....	2807...	175.00.
	1912.			
(205)	July 31,	To Globe Surety Co., premium on appeal bonds last above mentioned, for third year,.....	2951-2955...	175.00.

	1913.				
(206)	July	31,	To Globe Surety Co., premium on appeal bonds last above mentioned, for fourth year,.....3076-3084...		175.00.
	1914.				
(207)	Aug.	27,	To Globe Surety Co., prem. on above appeal bonds, for fifth year,.....	3173...	175.00.
(208)	Nov.	20,	To United States Fidelity and Guaranty Co., prem. on appeal bond Central Imp. Co. U. S. Circuit Court of Appeals, Cambria Steel Co. vs. K. C. Sub. Belt R. R. Co. et al., for yrs. 1912, 1913, and 1914, @ $37.50,.....	3196...	112.50.
	1915.				
(209)	Aug.	31,	To prem. on bond KC-1740, $37.50, and bond KC-1741 $6.25, in suit Cambria Steel Co. vs. K. C. Sub. Belt R. R. Co. et al.,.....	3227...	43.75.
(210)	Nov.	5,	To Globe Surety Co., prem. on appeal bond Central Improvement Co., in K. C. Sub. Belt R. R. Co. suit $150.00; prem. appeal bond Guardian Trust Co. in Belt Suit.....25.00	3236...	175.00.
			Total Premiums Paid On Bonds.....		$ 1,221.25

Miscellaneous Stenographic Expense.

				Mecartney Item No.		
	1905.					
(211)	Jan.	17,	To R. C. Pearson, preparing brief.....	6...	$	20.70.
(212)	March	15,	To J. M. Orr, 50 folios transcript.....	25...		12.50.
(213)	March	17,	To incidental stenographic work,.....	22...		3.75.
(214)	April	1,	To R. J. Holmden, petition,.....	25...		3.00.
(215)	April	1,	To Genevieve Parlin, steno. work on intervening petition,.....	25...		4.75.
			Amount forwarded.....		$	44.70

Miscellaneous Stenographic Expense Continued.

			Amount forwarded.....		$ 44.70
Item No.				Mecartney Item No.	
	1905.				
(216)	April	1,	To R. J. Holmden, copying exhibits,.....	25...	1.50.
(217)	April	1,	To R. J. Holmden, petition Guardian Trust Co. vs. K. C. Southern Ry. Co...	25...	2.00.
(218)	April	1,	To R. J. Holmden, misc. steno. services,.	25...	10.00.
(219)	April	1,	To Brown et al., steno. work on petiton Guardian Trust Co. vs. K. C. S. Ry. Co.	25...	7.50.
(220)	April	1,	To Brown, et al., steno. services for Mr. Mecartney in Cambria case,.....	25...	19.20.

(221) April	1,	To Incidental stenographic services,.....	25...	0.60.
(222) April	19,	To R. J. Holmden, work on petiton Guardian Trust Co. vs. K. C. Southern.....	28...	3.50.
(223) July	10,	To R. J. Holmden, steno. services.....	38...	40.00.
(224) July	10,	To R. J. Holmden, work on amended petition Guardian Trust Co. vs. K. C. S. Ry. Co.....	38...	1.50.
(225) Sept.	14,	To Ida E. Ladd, stenographer.....	42...	15.15.
(226) Nov.	13,	To R. J. Jetmore, stenographer,.....	52...	2.00.
(227) Dec.	9,	To W. H. Edwards & Co., stenographers, emergency brief work and copying from Oct. 7th to Nov. 9, 1905,.....	63...	28.52.
(228) Dec.	29,	To R. J. Holmden, steno., letters to Sullivan & Cromwell.....	68...	2.00.
1906.				
(229) Feb.	21,	To L. E. Taliaferro, making typewritten copies,.....	82...	10.00.
(230) Feb.	21,	To M. R. Jennings, copying answer and plea to second amended and supplemental ancillary bill,.....	82...	2.00.
(231) Feb.	21,	To R. J. Holmden, stenographer.....	82...	3.00.
(232) May	1,	To cost making typewritten copy of abstract of testimony and exhibits,.....	85...	37.60.
(233) May	8,	To Myrtle Christine, steno. services abstracting record.....	86...	12.60.
(234) June	1,	To Edwards & Co., copying certain documents, Cambria case,.....	93...	14.75.
(235) Aug.	18,	To L. M. Perry, Stenographer.....	103...	1.95.
(236) Aug.	18,	To R. J. Holmden, steno. work on petition in suit filed 7/2/1906,.....	103...	1.00.
1907.				
(237) June	13,	To stenographic services in preparing Suggestions and Brief, Cambria case,...	120...	6.00.
		Amount forwarded.....		$ 267.07

100 Miscellaneous Stenographic Expense Continued.

		Amount forwarded.....		$ 267.07
Item No.			Mecartney Item No.	
1908.				
(238) Jan.	8,	To Quick Service Writing Co., for 3 copies Supplemental Bill for Injunction of K. C. Southern Ry. Co. et al., in Cambria case.....	141...	5.70.
(239) Jan.	8,	To Quick Service Writing Co., for 3 copies of brief in Cambria case.....	141...	3.90
(240) March	14,	To Brown, Adams & Brown, court reporters, supplementary items,.....	153...	17.00.

(241) March 26,	To stenographic services in emergency matters.....		158...	41.00.
(242) March 26,	To R. J. Holmden, steno. services in writing memorandum in Cambria case,		159...	7.00.
(243) March 26,	To Quick Service Writing Co., copying letters, Cambria case,.....		159...	1.25.
(244) March 26,	To Miss Thompson, steno. services,.....		159...	2.50.
(245) March 26,	To Geo. H. Williams, steno. services,....		161...	10.00.
(246) May 6,	To Margaret Clements, making 3 copies of attorneys' arguments in Cambria Steel Co. vs. Guardian Trust Co.,	Voucher No.	2327...	25.00.
(247) May 6,	To Lillian Rawson, making 3 copies of attorneys' arguments in suit Cambria Steel Co. vs. K. C. Suburban Belt R. R. Co. et al.,.....	Voucher No.	2329...	31.50.
1911.				
(248) June 29,	To J. I. Levin, reporting oral argument in Central Improvement Co. vs. Cambria Steel Co., and Guardian Trust Co. vs. Cambria Steel Co., in U. S. Circuit Court of Appeals, at St. Paul, Minn., 6/21/11.....	Voucher No.	2786...	18.50.
(249) Oct. 6,	To J. I. Levin, St. Paul, Minn., transcript testimony 5/26/-27/1911, U. S. Circuit Court of Appeals, St. Paul, Central Imp. Co. vs. Cambria Steel Co., and Guardian Trust Co. vs. Cambria Steel Co.,	Voucher No.	2821...	86.70.
1913.				
(250) Feb. 24,	To Watson Law Reporting and Process Serving Co., stenographic services Jan. 20-22, 1913, at St. Louis, Mo., Cambria case,.....Voucher No.		3038...	12.50.
	Total Miscellaneous Stenographic Expense.....			$ 589.62

101 Miscellaneous Incidental Expense.

Item No.			Mecartney Item No.	$
1904.				
(251) Dec. 6-8,	To H. S. Mecartney, expense trip Chicago to Kansas City,.....		1...	41.00.
(252) Dec. 21,	To H. S. Mecartney, expense trip Chicago to Kansas City, Dec. 14-21, 1904,.....		2...	94.25.
(253) Dec. 21,	To express on 2 packages, Chicago to K. C.		3...	1.30.
1905.				
(254) Jan. 7,	To express on package, Chicago to K. C...		5...	1.10.
(255) Jan. 19,	To telegrams, Rosenberger to Mecartney		6...	1.06.
(256) Jan. 23,	To H. S. Mecartney, expense trip Chicago to Kansas City,.....		7...	32.00.
(257) Jan. 24,	To telegrams,.....		8...	2.13.

(258)	Jan.	27,	To H. S. Mecartney, expense trip Chicago to Kansas City, 1/25-27/1905,.....	9-10...	22.50.
(259)	Jan.	31,	To express on trunk of records, Chicago to Kansas City,.....	11...	2.30.
(260)	Feb.	3,	To H. S. Mecartney, expense trip Chicago to Kansas City 2/2/05,.....	12...	69.50.
(261)	Feb.	6,	To long distance telephone call to Mr. Harris, Champaign, Illinois,.....	13...	3.00.
(262)	Feb.	9,	To express on trunk of records, Chicago to Kansas City,.....	14...	2.32.
(263)	Feb.	13,	To express charges, 2 packages papers..	15...	1.30.
(264)	Feb.	15,	To telegrams,.....	16...	3.04.
(265)	Feb.	17,	To express on trunk of records, Cambria case, K. C. to Chicago,.....	17...	2.69.
(266)	March	9,	To telegrams and postage,.....	19...	1.46.
(267)	March	10,	To telegrams,.....	20...	2.55.
(268)	March	10,	To H. S. Mecartney, expense trip Chicago to Kansas City and return,.....	21...	23.85.
(269)	March	17,	To H. S. Mecartney, expense trip Chicago to Kansas City 3/13-17,.....	22...	89.75.
(270)	March	31,	To expense Mr. Brown, Attorney, Chicago to Kansas City, (assisting Mr. Mecartney), March 12-29, 1905,.....	23...	73.25.
(271)	March	31,	To expense H. S. Mecartney, Chicago to Kansas City and return,.....	24...	34.50.
(272)	April	1,	To drayage on testimony 50¢, drayage on trunk 50¢; express on trunk of records 35¢,.....	25...	1.35.
			Amount forwarded.....		$ 507.32

102 Miscellaneous Incidental Expense Continued.

			Amount forwarded.....		$ 507.32
Item No.				Mecartney Item No.	
	1905.				
(273)	April	1,	To telegrams, Rosenberger to Mecartney,	25...	1.78.
(274)	April	1,	To messenger service,.....	25...	0.15.
(275)	April	1,	To meals (Rosenberger and Wilcox), account work on Cambria case,.....	25...	4.80.
(276)	April	1,	To drayage on law books,.....	25...	1.25.
(277)	April	1,	To telegram, K. C. to Chicago,.....	25...	0.25.
(278)	April	1,	To locksmith, opening desk for papers,	25...	0.50.
(279)	April	1,	To telephone call, K. C. to Chicago.,....	25...	2.50.
(280)	April	17,	To telegrams,.....	26...	7.84.
(281)	April	19,	To expense H. S. Mecartney, Chicago to K. C. 4/19-21,.....	27...	31.50.
(282)	April	19,	To cash paid for court costs, Cambria case,.....	28...	3.00.
(283)	April	19,	To telegrams,.....	28...	2.83.
(284)	April	19,	To MacDonald, copy Knott letter,.....	28...	25.00.
(285)	April	19,	To long distance call, K. C. to Chicago,..	28...	2.75.

(286) May	5,	To H. S. Mecartney, expense Chicago to K. C., April 30th-May 5th, inc.,	29...	54.45.
(287) May	10,	To Barnard & Miller, printing report on litigation,	30...	1.00.
(288) May	10,	To Barnard & Miller, printing second report on litigation,	31...	5.25.
(289) June	12,	To H. S. McCartney, expense trip Chicago to K. C., June 6-8th,	32...	47.50.
(290) June	12,	To telegrams,	33...	2.05.
(291) June	23,	To H. S. Mecartney, expense trip Chicago to K. C.,	35...	46.50.
(292) July	8,	To H. S. Mecartney, expense trip Chicago to Kansas City,	37...	41.93.
(293) July	10,	To express charges (5 items)	38...	2.35.
(294) July	10,	To index to record, Cambria case,	38...	2.45.
(295) July	10,	To telegrams (4 items),	38...	2.60.
(296) July	10,	To Thos. E. Moore, for trunk for shipment of record,	38...	5.50.
		Amount forwarded		$ 803.05

103 Miscellaneous Incidental Expense Continued.

		Amount forwarded		$ 803.05
Item No.			Mecartney Item No.	
1905.				
(297) July	10,	To drayage on record,	38...	0.25.
(298) Aug.	19,	To express, Chicago to K. C.,	39...	1.00.
(299) Aug.	26,	To telegrams,	40...	2.00.
(300) Aug.	26,	To telegrams,	41...	2.04.
(301) Sept.	12,	To H. S. Mecartney, expense trip Chicago to K. C. 9/12,	43...	13.35.
(302) Sept.	14,	To telegrams, Rosenberger to Mecartney (2 items),	42...	0.56.
(303) Sept.	14,	To A. D. Flinton, services searching for record of drafts drawn by K. C. Sub. Belt Co., etc.,	42...	20.00.
(304) Sept.	14,	To drayage (2 items), ...50¢ messenger service (2 items), ...60¢	42...	1.10.
(305) Sept.	14,	To Postal Tel. & Cable Co., cablegram to Kuhn & Co., London,	42...	10.20.
(306) Oct.	4,	To express on pgk., K. C. to Chicago,	45...	0.25.
(307) Oct.	12,	To H. S. Mecartney, expense trip Chicago to K. C., Oct. 9-12th, inc.,	46...	19.80.
(308) Oct.	12,	To telegram to Johnson, Philadelphia	47...	0.45.
(309) Oct.	18,	To expenses of A. M. Strong, Atty., assistant to H. S. Mecartney, while in Kansas City, 4 weeks,	48...	91.35.
(310) Oct.	19,	To expense H. S. Mecartney, Chicago to Kansas City, Oct. 17-19,	49...	71.50.
(311) Oct.	28,	To telegrams,	50...	0.60.
(312) Nov.	6,	To express on record, Chicago to K. C.,	51...	1.15.

(312) Nov.	12,	To drayage on books,.....	52...	0.70.
(314) Nov.	13,	To H. P. Wright, time and trouble in attending as witness before Special Master, ...	52...	75.00.
(315) Nov.	13,	To drayage on record,.....	52...	0.35.
(316) Nov.	13,	To telegram, Rosenberger to Mecartney,	52...	0.46.
(317) Nov.	13,	To J. C. Rosenberger, railroad fare Kansas City to Chicago,.....	52...	15.00.
(318) Nov.	13,	To J. C. Rosenberger, expense trip Aurora to K. C. (railroad fare, meals, and incidentals),.....	52...	21.30.
		Amount forwarded.....		$ 1,151.66

104 Miscellaneous Incidental Expense Continued.

		Amount forwarded.....		$ 1,151.66
Item No.			Mecartney Item No.	
	1905.			
(319) Nov.	15,	To telegrams,.....	53...	2.94.
(320) Nov.	15,	To expenses A. M. Strong, Atty., assistant H. S. Mecartney, in Kansas City Oct. 15-Nov. 15,.....	54...	64.00.
(321) Nov.	17,	To cost of mailing opinion of C. O. Tichenor to directors and others,.....	56...	2.00.
(322) Nov.	20,	To express charges,.....	57...	0.35.
(323) Nov.	24,	To express, Chicago to K. C.,.....	59...	0.55.
(324) Nov.	25,	To H. S. Mecartney, expense trip Chicago to K. C., Nov. 23-25,.....	60...	73.60.
(325) Nov.	29,	To postage and express on briefs, etc.....	61...	2.18.
(326) Dec.	16,	To express on 2 trunks of records, K. C. to Chicago,.....	64...	4.10.
(327) Dec.	18,	To H. S. Mecartney, expense trip Chicago to K. C., Dec. 18-20/05,.....	65...	14.70.
(328) Dec.	20,	To express on record, Chicago to K. C.,..	66...	1.20.
(329) Dec.	20,	To telegrams,.....	67...	2.19.
(330) Dec.	29,	To telegrams, Rosenberger to Mecartney, (2 items),.....	68...	0.89.
(331) Dec.	29,	To L. Heynecker, for cablegram to Holland,.....	68...	7.00.
(332) Dec.	29,	To express on papers from New York,.....	68...	1.60.
(333) Dec.	29,	To J. C. Rosenberger, expense trip K. C. to Chicago, Detroit, and New York, Dec. 7-16/05,.....	68...	178.50.
(334) Dec.	31,	To telegrams,.....	70...	2.72.
	1906.			
(335) Jan.	3,	To express on papers,.....	71...	0.50.
(336) Jan.	6,	To express on papers, K. C. to Chicago,	72...	1.75.
(337) Jan.	13,	To H. S. Mecartney, trip Chicago to St. Louis, Jan. 10-13/06,.....	73...	29.65.
(338) Jan.	17,	To H. S. Mecartney, exp. trip Chicago to St. Louis, Jan. 14-17/06,.....	74...	36.25.

(339) Jan.	22,	To express on 2 trunks of records,.....	76...	4.30.
(340) Feb.	5,	To H. S. Mecartney, exp. trip Chicago to Kansas City (3 days),.....	80...	38.42.
(341) Feb.	24,	To H. S. Mecartney, exp. trip Chicago to Kansas City (2 days),.....	81...	39.07.
(342) Feb.	21,	To telegrams (15 items),.....	82...	6.87.
		Amount forwarded.....		$ 1,666.89

105 Miscellaneous Incidental Expense Continued.

Amount forwarded..... $ 1,666.89

Item No.			Mecartney Item No.	
1903.				
(343) Feb.	21,	To express charges (2 items),.....	82...	1.25.
(344) Feb.	21,	To Hurry-up Transfer Co., drayage on record,.....	82...	0.75.
(345) April	3,	To express 2 packages, and 1 telegram,..	83...	1.50.
(346) April	21,	To H. S. Mecartney, exp. trip Chicago to Kansas City,.....	84...	80.30.
(347) May	8,	To express charges on record.....	86...	1.40.
(348) May	8,	To Franklin Hudson Publishing Co.,.....	86...	0.25.
(349) May	8,	To Wulser Contracting Co., for cabinet for records,.....	86...	10.00.
(350) May	8,	To rent of typewriter for 2 months, acct. work on record, Cambria case,.....	86...	1.50.
(351) May	8,	To Hurry-up Transfer Co., drayage,.....	86...	0.50.
(352) May	8,	To R. B. Cone, New York, for time and trouble in attending as witness and giving deposition,.....	86...	25.00.
(353) May	8,	To expense trip J. C. Rosenberger to Hinsdale,.....	86...	1.11.
(354) May	8,	To express on record, Chicago to K. C.,..	87...	1.50.
(355) May	18,	To telegrams,.....	89...	1.14.
(356) May	19,	To H. S. Mecartney, expense trip Chicago to Kansas City (3 days),.....	90...	46.90.
(357) May	26,	To express on three packages,.....	91...	0.80.
(358) June	1,	To express on papers to New York,.....	94...	0.32.
(359) June	7,	To H. S. Mecartney, exp. trip to Philadelphia and New York,.....	95...	47.75.
(360) June	15,	To express on papers to New York,.....	95...	1.23.
(361) June	21,	To H. S. Mecartney, exp. trip Chicago to Kansas City (3 days),.....	100...	19.40.
(362) June	21,	To telegrams,.....	101...	2.18.
(363) June	20,	To H. S. Mecartney, exp. trip Chicago to Kansas City (4 days),.....	102...	78.05.
(364) Aug.	18,	To telephone call to Excelsior Springs,..	103...	0.20.
(365) Aug.	18,	To telegrams (14 items),.....	103...	11.90.
(366) Aug.	18,	To I. L. Broadwin, New York, services in re New York depositions,.....	103...	15.00.
(367) Aug.	18,	To telegrams,.....	104...	7.62.
		Amount forwarded.....		$ 2,024.44

106 Miscellaneous Incidental Expense Continued.

Amount forwarded.....$ 2,024.44

Item No.				Mecartney Item No.	
	1906.				
(368)	Aug.	18,	To H. S. Mecartney, exp. 2 trips Chicago to K. C., between July 4th and 14th, in argument of case (9 days in all),....	105...	75.00.
(369)	Oct.	25,	To H. S. Mecartney, exp. trip Chicago to Kansas City (2 days).....	106...	37.50.
(370)	Nov.	23,	To expense trip J. C. Rosenberger, K. C. to Chicago, Nov. 20-22,.....	107...	39.50.
(371)	Dec.	20,	To telegram, Chicago to K. C.,.....	108...	0.30.
	1907.				
(372)	Jan.	10,	To H. S. Mecartney, trip Chicago to K. C., 3 days,.....	109...	39.40.
(373)	Feb.	12,	To telegrams, express, and postage,.....	110...	2.10.
(374)	Feb.	12,	To H. S. Mecartney, expense trip to K. C. (2 days).....	111...	66.25.
(375)	May	20,	To H. S. Mecartney, expense trip to K. C. (2 days),.....	115...	21.55.
(376)	May	24,	To H. S. Mecartney, expense trip to Kansas City (2 days),.....	116...	66.35.
(377)	June	5,	To H. S. Mecartney, expense trip to Kansas City,.....	119...	12.60.
(378)	June	14,	To H. S. Mecartney, expense trip to Kansas City,.....	121...	65.25.
(379)	June	18,	To express and postage,.....	125...	1.90.
(380)	June	20,	To telegrams,.....	126...	1.62.
(381)	June	20,	To express and postage,.....	127...	1.93.
(382)	June	26,	To H. S. Mecartney, exp. trip to Kansas City, June 21-23,.....	129...	16.75.
(383)	June	26,	To Postage on briefs to directors,.....	129...	0.50.
(384)	July	7,	To telegrams,.....	130...	1.85.
(385)	Nov.	18,	To telegram,.....	131...	1.21.
(386)	Nov.	23,	To H. S. Mecartney, exp. trip Chicago to Kansas City, Nov. 21-22,.....	132...	23.20.
(387)	Dec.	1,	To H. S. Mecartney, exp. trip Chicago to St. Louis,.....	133...	19.60.
(388)	Dec.	14,	To H. S. Mecartney, exp. trip to K. C. and return, Dec. 14-16,.....	134...	34.20.
(389)	Dec.	18,	To express on papers to K. C.,.....	135...	0.75.
(390)	Dec.	19,	To express on papers to Judge McPherson,.....	138...	0.45.

Amount forwarded.....$ 2,557.25

107 Miscellaneous Incidental Expense Continued.

Amount forwarded.....$ 2,557.25

Item No.				Mecartney Item No.	
	1907.				
(391)	Dec.	28,	To telegrams,.....	139...	1.47.
	1908.				
(392)	Jan.	8,	To book-case for Judge Douglass, for Master's Record,.....	141...	10.00.
(393)	Jan.	8,	To messenger service,.....	141...	0.50.
(394)	Jan.	8,	To telegrams (7 items),.....	141...	3.66.
(395)	Jan.	8,	To long distance call to Hinsdale, Ill..	141...	2.75.
(396)	Jan.	8,	To messenger service, taking books to Judge Douglass,.....	141...	5.00.
(397)	Jan.	8,	To Geo. H. Roberts, steno. services drawing replies in State Court cases,.....	141...	1.00.
(398)	Jan.	8,	To J. C. Rosenberger, expense trip K. C. to St. Louis, 11/25-27/1907,.....	141...	18.75.
(399)	Jan.	24,	To H. S. Mecartney, expense trip to Kansas City, Jan. 21-24,.....	143...	37.60.
	1908.				
(400)	Jan.	29,	To telegrams,.....	145...	1.97.
(401)	Feb.	18,	To 2 telegrams,.....	146...	1.05.
(402)	Feb.	24,	To telegram from K. C.,.....	147...	0.50.
(403)	Feb.	17,	To H. S. Mecartney, expense trip Chicago to Kansas City (3 days),.....	148...	38.14.
(404)	Feb.	27,	To H. S. Mecartney, expense trip Chicago to Kansas City (2½ days),.....	149...	38.35.
(405)	Feb.	29,	To telegrams from K. C.,.....	150...	1.44.
(406)	March	6-14,	To express on papers.....0.35 Feb. telegrams.....1.50 express on brief.....0.60 cases to contain records.....2.85	151...	5.30.
(407)	March	20,	To telegram from K. C.,.....	152...	0.40.
(408)	March	26,	To H. S. Mecartney, expense trip Chicago to K. C., March 23-29,.....	156...	76.30.
(409)	March	26,	To express on papers,.....	157...	0.50.
(410)	March	26,	To sundry telegrams,.....	160...	5.70.
(411)	March	26,	To Kansas City View Co., for photographs of record for use on appeal,.....	162...	19 00.
	1909.				
(412)	June	25,	To E. P. Gates, expense trip K. C. to St. Paul, Minn., to attend U. S. Circuit Court of Appeals, suit Guardian Trust Co. vs. K. C. S. Ry. Co., June 15-17, 1908,.....Voucher No. 2500...		28.00.
			Amount forwarded.....		$ 2,849.13

108 Miscellaneous Incidental Expense Continued.

Amount forwarded.....$ 2,849.13

Item No.				Voucher No.	
	1909.				
(413)	June	25,	To E. P. Gates and Geo. H. English, Jr., exp. trip to St. Louis on first setting of Guardian Trust Co. vs. K. C. S. Ry. Co. in U. S. Circuit Court of Appeals, Dec. 13-15, 1908,.....	2500...	60.00.
(414)	June	25,	To E. P. Gates and Geo. H. English, Jr., exp. trip to St. Louis, on hearing Guardian Trust Co. vs. K. C. S. Ry. Co. in U. S. Circuit Court of Appeals, Jan. 1-5, 1909,.....	2500...	65.00.
	1911.				
(415)	May	31,	To Gates & English, railroad fare and expenses at argument of appeal from final decree, Guardian Trust Co. vs. Cambria Steel Co., May 24-28th, inc.,	2773...	105.50.
(416)	June	29,	To Gates & English, expenses trip St. Paul, Minn., June 20-22, inc., to attend hearing of motion of Shedd et al. in Guardian Trust Co. vs. Cambria Steel Co., appeal,.....	2787...	74.00.
	1912.				
(417)	Jan.	16,	To Gates & English, expense trip to St. Louis to attend United States Circuit Court of Appeals 12/4/11, Belt and K. C. S. Ry. Co. suits,.....	2881...	25.00.
(418)	Jan.	18,	To Haff, Meservey, German & Michaels, 2 telegrams Cambria case,.....$1.87, express on briefs, " "..... .50	2884...	2.37.
(419)	Nov.	19,	To Gates & English, expense trip St. Louis 10/26/12, to inspect opinion of U. S. Circuit Court of Appeals,.....	2998...	50.00.
(420)	Dec.	6,	To Haff, Meservey, German & Michaels, account telegram Cambria case,.....	3007...	0.75.
	1913.				
(421)	Jan.	31,	To expense Gates & English and D. J. Haff, attending hearing Belt case in U. S. Circuit Court of Appeals,.....	3025...	146.05.
(422)	Feb.	24,	To Gates & English, expense trip St. Louis to attend U. S. Circuit Court of Appeals, Cambria case, 1/19/13,.....	3036...	18.00.
(423)	Dec.	20,	To Gates & English, expense trip St. Louis to examine and make synopsis of opinion of U. S. C. C. A. in Guardian Trust Co. vs. K. C. S. Ry. Co.....	3131...	50.00.

	1914.				
(424)	May	24,	To Gates & English, expense trip to St. Louis, in respect to perfecting record and allowing of appeal, etc., Jan. 22-23, 1914,.....	3162...	58.00.
			Amount forwarded.....		$ 3,503.80
109			Miscellaneous Incidental Expense Continued.		
			Amount forwarded.....		$ 3,503.80
Item No.				Voucher No.	
	1914.				
(425)	May	14,	To Gates & English, expense trip to Washington, D. C., to examine record to Supreme Court, prepare for hearing, etc., March 21-29, 1914,.....	3162...	260.40.
(426)	May	14,	To Gates & English, expense trip to Washington, D. C., to submit motion to dismiss and resist application for certiorari and intervention, April 22-29, 1914,.....	3162...	252.00.
	1915.				
(427)	Nov.	9,	To Gates & English, expense trip to St. Louis to consult with F. W. Lehmann in preparing briefs in Belt case,..	3238...	54.00.
(428)	Dec.	31,	To expenses Gates & English, F. W. Lehmann, and others, to Washington, D. C., to attend hearing U. S. Supreme Court, K. C. Sub. Belt R. R. Co. case,	3249-3250-	300.17.
			Total Miscellaneous Incidental Expense.....		$ 4,370.37

Credits Against Miscellaneous Incidental Expense:

Item No.				
(429)	By amount refunded by Western Passenger Assn. on six 2M. mile tickets, $19.50 on each,.....		$ 117.00.	
	Mecartney Credit item No. 1-			
(430)	By proportion of telegrams charged to Channel & Dock case, Mecartney credit, Item No. 2.....		6.80.	
(431)	By reduction account hotel bills, Mecartney Credit Item No. 3.....		40.00	
(432)	By amount transferred to general account, being proportion of railway fare, berths, meals, and hotel expenses in attending seven meetings of the Executive Committe at Kansas City, Mecartney Credit Item No. 4.....		200.00	
	1906.			
(433)	July	16,	By refund on mileage ticket, Mecartney Credit Item No. 5.....	19.50.
(434)	July	18,	By refund on mileage ticket, Mecartney Credit Item No. 6.....	19.50.

(435)	Aug. 27,	By refund on mileage ticket, Mecartney Credit Item No. 8.....	9.16.	
(436)	Oct. 26,	By refund on mileage ticket, Mecartney Credit Item No. 9.....	19.50.	
	1907.			
(437)	June 15,	By refund on mileage ticket, Mecartney Credit Item No. 11.....	9.50.	
(438)	June 26,	By refund on mileage ticket, No. 12.....	9.50.	
(439)	Dec. 2,	By refund on " " " 14.....	9.50.	
		Total Credits.....		459.96
		Total Miscellaneous Incidental Expense after deducting Credits		$3,910.41

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Recapitulation.

Group I:		
Master's Fees.....	$ 8,553.50	
Reporting Testimony before Master, Etc.....	$ 6,697.20	
Other Court Costs, Exemplified Copies of Records, (after deducting Credits of $980.76),.....	$ 3,419.49	
Total Group I.....		$18,670.19
Group II:		
Counsel Fees,.....	$ 299,137.30	
Printing Briefs, Etc.,.....	$ 1,579.04	
Expert Accountants, Etc.,.....	$ 13,455.35	
Premiums Paid on Bonds,.....	$ 1,221.25	
Miscellaneous Stenographic Expense,.....	$ 589.62	
Miscellaneous Incidental Expense (after deducting Credits of $459.96),.....	$ 3,910.41	
Total Group II.....		$319,892.97
Grand Total.....		$338,563.16

Received copy hereof this 19th day of October, 1923.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
By F. H. Moore
Cyrus Crane A. F. Smith
Its Solicitors.

CAMBRIA STEEL COMPANY
By R. E. Ball
Its Solicitor.

111 "Exhibit D."

Supplemental Claim of H. C. Flower, Receiver of Guardian Trust Company, for Reimbursement for its Costs and Expenses.

In the District Court of the United States for the Western Division of the Western District of Missouri.

Cambria Steel Company, Complainant,
vs.
Guardian Trust Company et al., Defendants.

Swinney, Receiver, et al., Complainant.
No. 2468. vs. In Equity.
Cambria Steel Company, et al., Defendants.

The Kansas City Southern Railway Company, Complainant,
vs.
Guardian Trust Company et al., Defendants.

Now comes Guardian Trust Company, and files this, its supplemental claim for reimbursement for its costs and expenses, filed with leave of the Special Master, Hon. H. D. Ashley, as follows:

February 14, 1924.

Cambria Steel Company and Kansas City Southern Railway Company, Debtors,

To Henry C. Flower, Receiver of Guardian Trust Company:

Group I.

Costs As Between Party And Party.

Item No.		Credit.	
(440)	1909 Oct. 27.	By check from Messrs. Gates & English, account costs received from Kansas City Southern Ry. Co. account injunction order of Judge McPherson reversed on April 2, 1909 by U. S. C. C. A. (See 171 Federal 43), costs of which appeal were taxed against Kansas City Southern Ry. Co. (See entry on Guardian Trust Co. Cash Book, page 240, under date Oct. 27, 1909; Trust Company's ledger, page 90).....	$1,482.55

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Group II.

Costs And Expenses As Between Solicitor And Client.

Item No.				Voucher No.	
1902.					
(441)	Oct.	8,	To amount allowed as attorneys' fees by Judge Thayer, by paragraph 6 of his order of Oct. 11, 1902, discharging Wash Adams as Receiver of Guardian Trust Co. in Bierce case, to Wollman, Solomon & Cooper, for services rendered Judge F. M. Black, Receiver, and Wash Adams, his successor, in and about effort to protect and realize on certain items of collateral security held by Guardian Trust Co. as collateral to indebtedness of K. C. Sub. Belt R. R. Co. to Guardian Trust Co., contested by Cambria Co., Kansas City Southern Ry. Co., and Belt Receivers, in this cause during period of receivership of Messrs. Black and Adams, Nov. 30, 1900, to October 11, 1902,—Trust Co. Voucher No.....	145	$ 3,500.00
1904.					
(442)	Jan.	20,	To amount paid Wollman, Solomon & Cooper, Attorneys for Guardian Trust Co., for further services rendered in the matters last aforesaid, being settlement with them in full to that date. (See Guardian Trust Co. Ledger, page 100, covered by Trust Co. Voucher No. 480, missing,.....	480	1,500.00
1905.					
(443)	Jan.	14,	To amount paid to N. S. Mecartney, $1500.00 attorneys' fees, and $277.51 expenses, for examining into the status of the Cambria Steel Co. litigation and Port Arthur, Channel & Dock Co. litigation— (See Trust Co. voucher No. 802; also minutes of meeting of Executive Committee of Guardian Trust Co. held Nov. 4, 1904, set forth at Page 2334 of the record on appeal in U. S. C. C. A. in case Guardian Trust Co. Et Al., Appellants, vs. E. A. Shedd and C. B. Shedd, Appellees; also minutes of same Committee of meeting held Dec. 7, 1904, set forth at Page 2386 et seq. of same record; and see copy of Mr.		

Mecartney's report, dated Dec. 1, 1904, on said litigation, set forth at Page 556 in printed abstract of the record in suit H. S. Mecartney vs. Guardian Trust Co.,	802..		1,777.51
Total Items in Group II. of Supplemental Claim..			6,777.51
Amount of items in Group II. carried forward from statement heretofore filed with the Master, dated October 15, 1923,		$	319,892.97
Total Group II			$326,670.48
Amount Forward		$	326,670.48
113 Amount Forward		$	326,670.48
Amount of items in Group I. carried forward from said statement dated Oct. 16, 1923, filed with the Master,	$18,670.19		
Less amount of above Credit in Group I. for costs refunded on injunction appeal,	$ 1,482.55		
	$17,187.64		
			17,187.64
Grand Total			$343,858.12

Received copy hereof this 15th day of February, 1924.

THE KANSAS CITY SOUTHERN RAILWAY COMPANY
F. H. Moore
By Cyrus Crane A. F. Smith
Its Solicitors.

CAMBRIA STEEL COMPANY
By R. E. Ball
Its Solicitor.

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114 (Exceptions of Guardian Trust Company to Report of Special Master.)

In the District Court of the United States for the Western Division of the Western District of Missouri.

Cambria Steel Company, Complainant,
vs.
Guardian Trust Company et al., Defendants.

Swinney, Receiver, et al., Complainant,
No. 2468. vs. In Equity
Cambria Steel Company et al., Defendants.

The Kansas City Southern Railway Company, Complaint,
vs.
Guardian Trust Company et al., Defendants.

Now comes Guardian Trust Company, by Henry C. Flower, its Receiver, hereinafter called the Trust Company, and excepts to the report of Hon. H. D. Ashley, Esq., Special Master, filed in this cause on the 15th day of September, 1924, and for cause of exception shows:

(Legend; References to items are the items as numbered and set forth in the itemized statement of account, dated October 15, 1923, filed by the Trust Company with the Special Master October 23, 1923, and in the supplemental statement of said account dated February 14, 1924, filed with the Master.

References to vouchers are the vouchers specified in said statement of account of the Trust Company.

Page references, except where otherwise stated, are to the transcript of the testimony taken by said Master and returned with said report.

The record of proceedings and testimony before Shannon C. Douglass, deceased, former Master in this cause, filed with said Douglass' report in 1910, is referred to as the "Douglass record."

First: Items 4-32, inclusive, being moneys paid by the Trust Company to H. A. Jetmore, Court Reporter, for taking and transcribing the record of proceedings had before Shannon C. Douglass Special Master in this cause, aggregating $6,674.70:

The Trust Company excepts to the allowance of these items to the extent only of $2725.77, and to the disallowance of them as to the balance claimed of $3,948.93 not only as costs
115 between party and party, but as other expense of litigation; whereas the Master should have allowed said items to the full extent claimed, to-wit, for $6,674.70, as costs between party and party, and in any event the Master should have allowed said balance as a necessary expense of the Trust Company in the litigation described in the order appointing the Master, for reasons following:

(a) The full amount of these items and each of them were taxable court costs as between party and party. The payment of them by the Trust Company, and the necessity therefor, is shown by the vouchers given by it to Jetmore in payment of his bills, and by his bills attached to said vouchers, set forth at pages 46 to 87. The nature and magnitude of the case, as shown by the pleadings herein, the unusual size of the record of evidence taken by said Douglass, contained in 57 volumes, totaling 35,554 pages of testimony; the various orders made by this court allowing fees to said Douglass as Special Master (875, 878, 881); and the evidence taken before the Master herein, show that the case could not have been presented to Master Douglass or decided by him or by the court without said testimony being taken and transcribed and copies of the transcript furnished not only to the Master but to parties litigant, and that the fees paid to said Jetmore, as specified in said items and supporting vouchers, were for a single item of service, namely, the furnishing of said transcript to court and Master and requisite counterparts thereof to parties litigant. And it was error for the Master to hold that merely because said Jetmore, in obtaining progress payments from the parties account his charges, billed them at one rate for original transcript and at another rate for such counterparts, according to which party had introduced the testimony transcribed, that the Master is bound by such method of the stenographer of obtaining such advances against his fees. It is shown by the orders of the court, making progress allowances of fees to the Special Master, that throughout the cause the Trust Company was being required to advance to court officers one-third of their fees and the Southern Company and Cambria Company two-thirds thereof, and said order provides that "the question of how said allowance in favor of said Master, as well as other
116 items of costs and expenses herein, shall be taxed and charged against said parties" should await the final determination of the cause (see court orders, Record 875, 878, and 881; see also testimony of Jetmore, 596-602, 610). It was therefore error to disallow these Jetmore disbursements of $6,674.70 as court costs between party and party and to limit such allowance to $2725.77.

(b) But even were the Master right in holding that these items, to the extent of the disallowed balance of $3,948.93, paid to Jetmore were not costs between party and party (and we contend they were such costs), still the balance of the items claimed, to-wit, $3,948.93, were clearly necessary expenses of the litigation, which, in any event, should, by the

express mandate of the order of reference, have been allowed as such, whereas the Master disallowed said balance not only as costs as between party and party, but also as a necessary expense of litigation, thus depriving the Trust Company of reimbursement therefor. This was error. These items paid by the Trust Company for transcript of testimony before Master Douglas were a necessary expense of the litigation, and under the opinion of this court and the order made pursuant thereto appointing said Master, and under the evidence, it was the duty of the Master to allow these items in full as costs between party and party, and, in any event, as a necessary expense of litigation, whereas the Master failed to allow them either as the one kind of costs or the other, except only to the extent of $2725.77, wherein the Master erred (see evidence above cited.)

Second: Items 33, 35-40, inclusive, 41-56, inclusive, 58-67, inclusive:

The Trust Company excepts to the disallowance of these items as costs between party and party separately and as a group. The Master states he disallows all of these items for one and the same reason, which is set forth by him under the head of item 135 in his report; the reason so as-
117 signed for disallowing these items as costs between party and party is shown by said portion of his report to be founded on manifest mistake.

It there appears in said Master's report that merely because the items of costs between party and party specified in this exception were included in the itemized statement of expenses annexed to the petition of H. S. Mecartney in his State court suit against the Trust C mpany, and were included in the judgment recovered by him against the Trust Company in said suit, the Master erroneously concluded that the items herein specified were not costs between party and party, disallowed them as such, and allowed them only as so-called costs between solicitor and client. This was error. It appears from said itemized statement of account of said Mecartney, sued on by his petition in said State court suit, and from the judgment of the State court rendered thereon, that the said State court judgment against the Trust Company included therein all expenses laid out by Mr. Mecartney on behalf of the Trust Company without regard to whether they were costs between party and party or other expenses necessary to the conduct of the litigation (Rec. 235-255.) By

paying said State court judgment the Trust Company paid all of said expenses so sued for and recovered by Mecartney. It was the plain duty of the Master, under the order of reference, to take and state an account of the Trust Company's court costs and other expenses; said order expressly directed the Master to "set out the taxable court costs as between party and party separately from the other expenses of the Guardian Trust Company hereinabove mentioned." This duty the Master failed to perform. Instead of so doing, and ascertaining which of said costs enumerated in said Mecartney's statement in his State court suit were costs between party and party, and which thereof were other expenses of this litigation, the Master erroneously allowed all of the items in Mecartney's account as so-called costs between solicitor and client. The items first above specified in this exception were in fact costs between party and party and taxable as such; no finding to the contrary is made by the Master, but they are nevertheless disallowed by him as such.

118 These items represent court costs, fixed by statute, actually paid by the Trust Company, through Mecartney, to the officers of this and appellate courts for making and printing the record in successful appeals taken herein by the Trust Company from decrees of this court, in the taking of despositions introduced and read in evidence before Master Douglass, and the like, and exception is taken to their disallowance as costs between party and party and to their classification as costs between solicitor and client.

Third: Items 41, 68, 71-73, inclusive, and 77, being court costs paid by the Trust Company to officers of this court and of Appellate courts for making written and printed transcript of the record on appeal as required by the rules of such Appellate courts:

The Trust Company excepts to the disallowance of this group of items separately and as a group as costs between party and party, and to their disallowance by the Master not only as such costs but as costs between solicitor and client. They were clearly costs between party and party (see the vouchers specified in these items of charge, viz., Item 41, p. 89; Item 68, p. 91; Item 71, p. 94; Item 72, p. 95; Item 73, p. 96; Item 77, p. 101).

The sole reason assigned by the Master for the disallowance of these items as costs between party and party is assigned by him as follows:

"Disallowed by the Master as the Master is of opinion that he has no power to retax costs already taxed in the United States Court of Appeals."

This conclusion of the Master is erroneous, because he was directed by the order of reference to ascertain the amount of these costs from the files and state them without regard to whether they had been taxed by the Court of Appeals or not, so that the court could conveniently include in its decree the unpaid court costs properly recoverable by the Trust Company without need of searching through the files or Clerk's records for that purpose. The order of reference does not purport to authorize the Master to tax any costs whatever, but simply requires him to ascertain the court costs separately from other expenses of litigation and to state and file separate account of same, without regard to whether said costs have heretofore been taxed or not. The refusal, therefore, of the Master to make any finding touching these items and to ascertain and state the amount thereof, imposes upon this court a duty which it was the purpose of the order of reference to avoid, and the Master erred in failing to perform it. Attention is directed to the fact that while some of the items in this group are included in Mecartney's expense account recovered by him from the Trust Company in his State court suit, many of them, amounting to considerable sums, are not so included, to-wit, items No. 41, 68, 71-73, inclusive, and 77, aggregating $3,244.05, being direct payments made by the Trust Company by its own checks for fees of court officers for furnishing record on appeals from decrees of this court, required by rules of appellate courts. By the action of the Master in excluding and disallowing said items the Trust Company is prevented from obtaining reimbursement for such court costs not only as costs as between party and party, but as other expenses held recoverable by the Trust Company by this court and by the order appointing the Master, to which action by the Master the Trust Company excepts.

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Fourth: The Trust Company excepts to the allowance and finding of the Master, as costs between party and party, in favor of the Trust Company, in the total sum of $11,499.32, as inadequate and insufficient under the evidence, whereas the Master should have allowed as such costs the full amount claimed under the heading of Group L. in said account, to-wit, the sum of $18,670.19.

Fifth: Interest: The Trust Company excepts to the denial by the Master of the Trust Company's prayer that the

Southern Company and Cambria Company be charged with interest at the rate of six per cent. per annum on the moneys paid out by the Trust Company for court costs and other expenses specified in items 1-443, inclusive, of the Trust Company's claim, and that such interest be charged from the date on which each disbursement was made to date, because:

120 (a) Said disbursements were made and became liquidated from the date on which they were made.

(b) Because, as found by this court and by decisions of appellate courts, the Trust Company was wrongfully required to make said disbursements by the wrongful acts of the Cambria Company and Southern Company in instituting and prosecuting the baseless litigation described and characterized in the opinions of the United States Court of Appeals and of this court in its memorandum opinion filed in this cause in June, 1923, and the Cambria Company and Southern Company are therefore in no position to claim that demand for reimbursement should have been made by the Trust Company, such demand being implied by law.

(c) Because principles of equity and good conscience require that such interest be allowed if the Trust Company is to be made whole on account of such costs and expenses yhich it was thus required to pay by the wrongful conduct of its adversaries therein.

(d) Because the Master erred in concluding that merely because of the large amount of costs and expenses wrongfully inflicted on the Trust Company by its said adversaries, and for which, under the decisions of this and appellate courts, the Southern and Cambria companies rendered themselves liable, this in any wise affects the duty and obligation of the Cambria Company and Southern Company to pay such interest, or the duty of the Master to allow same.

(e) Because the Master erred in holding that the Southern Company and Cambria Company were not responsible for the delays of the litigation, said finding being contrary to the findings of this court in its memorandum opinion filed herein June ...., 1923, and the order appointing the Master, as well as the findings of the appellate courts which have passed on this cause.

(f) Because the Master erred in holding that the disallowance of such interest was warranted "by the surrounding circumstances in this portracted litigation," for that by the

decision of this court and of the appellate courts in
121 this cause it has repeatedly been held that this protracted litigation, instituted by the Cambria Company and the Southern Company in their own names or in the names of others, was baseless and unwarranted, and that the costs and expenses herein mentioned were wrongfully inflicted upon the Trust Company, and by the order of reference and the opinion of this court, made part thereof, it was held that all such costs and expenses were justly chargeable against the Southern Company and Cambria Company, and the Master, in holding that the "surrounding circumstances" relieved the said parties from the payment of interest, went beyond his province and contrary to the order of his appointment (see opinion U. S. Circuit Court of Appeals, 210 Federal 696; see also opinion of this court filed in June, 1923, appointing Special Master.)

Sixth: Items 83-107, Inclusive, Totaling $11,149.92, Being Stated Monthly Sums Paid To J. McD. Trimble, Counsel For The Trust Company In This Cause, During The Period October 31, 1902, To October 25, 1904, Inclusive:

The Trust Company excepts to the disallowance by the Master of this group of items separately and as a group. The evidence showed that during said period all of Mr. Trimble's time was engrossed in defending, as counsel on behalf of the Trust Company, against the litigation commenced herein by the Southern Company and the Cambria Company, and that the pendency of said litigation was the sole reason for his employment (see testimony of Jetmore, 601-615; C. A. Braley, Rec. 270-310; S. B. Willey, Rec. 408-488; J. C. Rosenberger, Rec. 519-520; Douglass record, Vols. I. to XV.; and see the docket entries and files in this cause showing the pleadings filed and proceedings participated in by Judge Trimble during said period).

The Master erred in holding that merely because Judge Trimble was paid these items as a regular monthly salary, fixed by the directors of the Trust Company in the interest of the economical conduct of its litigation, and this relieved the Cambria Company and Southern Company from reimbursing the Trust Company for the amount so paid in salary; it appearing from said evidence that the Trust Company
would not have employed Judge Trimble at such
122 salary except on his agreement to give his whole time to said litigation, and that he did give his whole time thereto, and no finding to the contrary is made by the Master. It should have been held by the Master that inasmuch as the

Trust Company would not have employed Judge Trimble on a salary except for his consenting to give his whole time to said litigation, and as he faithfully discharged said obligation, the Trust Company is entitled to reimbursement for the salary items so paid.

Seventh: Item 180, being pro-rata portion of salary paid to S. B. Willey, expert accountant, total $8,093.35, for services for testifying as expert witness before S. C. Douglass, Special Master herein, and for preparing elaborate tabulations and data for use of Receiver and counsel touching state of the account between the Trust Company and various companies involved in the accounting herein, said services extending continuously from December 1, 1900, to December 1, 1904.

The Trust Company except to the disallowance of said item by the Master as a necessary expense of litigation recoverable by the Trust Company, for that the evidence showed that more than half of Mr. Willey's time was engrossed in rendering said services during the period December 1, 1900, to June 1, 1901, during which period one-half of his salary is claimed, and that all of his time was so engrossed in rendering said services from June 1, 1901, to December 1, 1904; that all of said services were necessary to a proper defense by the Trust Company, that they were of an unusually exacting, arduous, and protracted character, that the Trust Company was of necessity compelled to incur said expense, and that the salary paid to said Willey would not have been paid to him except for the rendition of said services (see testimony S. B. Willey, Rec. 408-488; H. A. Jetmore, Rec. 603-615; C. A. Braley, Rec. 270-310; see Vol. 1-15 of the Douglass Record, devoted almost exclusively to said Willey's testimony and tabulations, showing the number of proceedings at which he testified, the intricacy of the accounting conducted by him; and see the vouchers showing payment of said salary, Rec. 153-154-D). The Master erred in holding that because the Trust Company by employing said Willey on a salary to perform said services made itself liable for said salary, this relieved the Southern Company and Cambria Company
123 from making reimbursement therefor. The Master's conclusion should have been just the contrary. The Master, by so holding, disregarded the evidence, which showed that Mr. Willey would not have been employed on such salary except to perform said services in this suit, that his services were vitally necessary to the proper defense of the litigation, as to which necessity for his employment the Master erroneously fails to make any finding one way or the

other, and thereby disregarded the real issue involved in this item.

Eighth: Item 181, being pro-rata portion of salary paid to Jennie L. Gott, Stenographer, total $2,690.00, for stenographic services in preparing tabulations and exhibits for use at hearings before Special Master and for the Receiver, said services extending from December 1, 1900, to December 1, 1904:

The Trust Company excepts to the disallowance of said item by the Master as a necessary expense of litigation, recoverable by the Trust Company, for that the evidence showed that more than half of said Jennie L. Gott's time was engrossed in rendering said services during the period December 1, 1900, to June 1, 1901, during which period one-half of her salary is claimed, and that all of her time was so engrossed in rendering said services from June 1, 1901, to December 1, 1904; that all of said services were necessary to a proper defense by the Trust Company, that the Trust Company was of necessity compelled to incur said expense, and that the salary paid to said Jennie L. Gott would not have been paid to her except for the rendition of said services (see testimony S. B. Willey, Rec. 384-425; C. A. Braley, Rec. 275-381; see Vol. 1-15 of the Douglass Record, devoted exclusively to said tabulations, etc.; and see the vouchers showing payment of said salary, Rec. 153-154-D.) The Master erred in holding that because the Trust Company by employing said Jennie L. Gott on a salary to perform said services made itself liable for said salary, this relieved the Southern Company and Cambria Company for making reimbursement therefor. The Master's conclusion should have been just the contrary. The Master, by so holding, disregarded the evidence, which showed that Miss Gott would not have been employed on such salary except to perform said services in this
suit, that her services were vitally necessary to the
124 proper defense of the litigation, as to which necessity
for her employment the Master erroneously fails to make any finding one way or the other, and thereby disregarded the real issue involved in this item.

Ninth: Items 423-428, Inclusive, being bills of Gates & English rendered to and paid by the Trust Company for the necessary traveling and incidental expenses of said attorneys in attending upon appellate courts in which this cause was pending, to argue this case in behalf of the Trust Company and to perform other necessary duties incident of the defense of this suit.

The Trust Company excepts to the disallowance of these items as costs between solicitor and client separately and as a group, because it was obviously necessary for the Trust Company to be represented by its counsel in the argument of its case and to attend the court at distant cities, and to attend to the proper making up of the record on appeal (see the vouchers supporting these items of expense, viz., Item 423, p. 180; Item 424, p. 181; Items 425, and 426, p. 181; Item 427, p. 135; Item 428, p. 182).

The Trust Company especially excepts to the disallowance by the Master of item 428, covering the expense of Messrs. English and Lehmann, counsel for the Trust Company, and Messrs. Lloyd and Prescott, officers of the Trust Company, in attending hearing of this cause in the U. S. Supreme Court at Washington, D. C., on the ground assigned by the Master that because the voucher includes some expense of J. A. Prescott to New York the entire item should be disallowed, whereas the Master should have found that New York is enroute to Washington and either involved no extra expense, or so small an additional expense as to be easily capable of estimation and deduction.

Tenth: Items 441 and 442, Total $5,000.00, paid to Wollman, Solomon & Cooper, for Attorneys' fees in this suit during the period November 30, 1900, to January 20, 1904, all as more fully specified in said items:

The Trust Company excepts to the disallowance by the Master of each and both of these items as costs between solicitor and client. This expense was directly occasioned by the litigation mentioned in this court's order appointing the Master. Of these attorneys' fees $3500.00 was paid under an order made by Judge Thayer in the Bierce case on October 11, 1902 (page 796, and see voucher 145, p. 732), and the remaining $1500.00 was paid January 24, 1904,
125 for the balance due these attorneys on January 20, 1904, (Leavens, pages 733-735). The evidence showed that the services of these attorneys was made necessary by the attack made by the Southern Company and the Combria Company on the Trust Company's right to retain the collateral pledged with it by the Belt Company (testimony J. C. Rosenberger, 580-585, 801; see intervening petition filed for Trust Company by these attorneys, 803-825; see also paragraph VI. Douglass report). These items should have been allowed by the Master.

Eleventh: Item 443, being for $1777.51 attorneys' fees and expenses paid to H. S. Mecartney by the Trust Company on

January 14, 1905, by its voucher No. 802, and not included by him in any amount recovered by Mecartney from the Trust Company in his State court suit;

The Trust Company excepts to the disallowance of this item by the Master. The services and expenses of Mecartney covered by this item were for investigating the status of this cause and the issues therein, and for making report thereon with his recommendations, were rendered by Mecartney and paid for by the Trust Company in the ordinary course of business as a necessary expense of this litigation, its former counsel, Mr. Trimble, having resigned as such (see Trust Company's minutes, Rec. 740-743; see voucher No. 802, Rec. 738). The Master erred in holding that this expense might have been avoided by the Trust Company, as Mr. Mecartney on prosptctive employment would probably have made the report without charge if demanded," such holding being contrary to all the evidence, and is not based on any evidence. The Master should have held that the Trust Company, having incurred this expense, was bound to pay it, and did pay it only after objection to the charge and after bargaining for and obtaining a reduction thereof (see Trust Co. minutes, 740-743). The Master further erred in disallowing said item "in view of the substantial judgment of the Supreme Court (of Missouri) allowed in full by this Master", for that this item was not included in said judgment of the Missouri Supreme Court in the Mecartney suit vs. the Trust Company, was for a distinct and separate service separately paid for by the Trust Company, and the Master erred in allowing his mind to be influenced by the amount recovered by Mecartney for other services in said State court suit, not related to the items here in question.

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Twelfth: The Trust Company excepts to the action of the Special Master in excluding from evidence the court files in equity cause No. 2483 in the District Court of the United States for the Western Division of the Western District of Missouri, entitled Bierce and others versus the Guardian Trust Company, all as set forth on pages 959-962, inclusive, of the transcript of the testimony before said Master.

Thirteenth: The Trust Company excepts to the action and ruling of the Master in excluding from evidence the record on appeal in Case No. 4859 in the District Court of the United States for the Western Division of the Western District of Missouri, in the cause entitled E. A. Shedd et al. vs. Guardian Trust Co. et al., which said record is in three printed volumes, which were identified as Exhibits 5-A, 5-B,

and 5-C, all of which is shown on page 963 of said transcript of the evidence taken before said Master. Said evidence should have been admitted, because said record contains evidence explanatory of the items contained in the Trust Company's claim filed with the Master, as, for illustration, the minutes of the Trust Company showing authorization of the disbursement, and shows the general situation making the disbursements claimed herein essential to a proper defense against the unwarranted litigation commenced by the Southern Company and the Cambria Company, and other material evidence.

Fourteenth: The Trust Company excepts to the finding of the Master that the total amount allowed and allowable for the items in Group II, of the account charged as expenses between solicitor and client is the sum of $296,520.37, said allowance being inadequate and insufficient, and the Master should have found and allowed, exclusive of interest, the total amount of such expenses to be the items claimed by the
127 Trust Company in said Group II, totaling $326,670.48, exclusive of interest, the difference between the amount last aforesaid and the amount allowed, as aforesaid, being represented by items of expense other than court costs claimed by the Trust Company and disallowed by the Master, as shown by his report.

J. D. BOWERSOCK
J. C. ROSENBERGER

Filed in District Court of United States, September 27, 1924.

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129 Exceptions of The Kansas City Southern Railway Company and the Cambria Steel Company to the report of Honorable Henry D. Ashley, Special Master, filed herein on, to-wit: September 15. 1924.

Come now The Kansas City Southern Railway Company and the Cambria Steel Company and except to the report of the Honorable Henry D. Ashley, Special Master, filed in this court and cause on, to-wit: September 15, 1924.

For convenience, The Kansas City Southern Railway Company is referred to herein as the "Kansas City Southern," the Cambria Steel Company as the "Cambria Company," and the two as the "Exceptants." The Guardian Trust Company and its receiver are referred to herein as the "Trust Company"; the "Claim of Henry C. Flower, Receiver of the Guardian Trust Company for Reimbursement of its costs

and expenses" filed before the Master on, to-wit: October 22, 1923, is referred to herein as the "Trust Company's Statement of Account", and each of the several items of said Statement of Account is referred to by the number given to it therein. Figures herein in parenthesis, unless otherwise designated, refer to the pages of the transcript of the evidence adduced before Honorable Henry D. Ashley, Special Master. The objections of the Exceptants read into the record on Pages 7 to 41-C, inclusive, of said transcript of the evidence, are referred to as the "written objections."

For cause of exceptions, the Exceptants say that they except to said report of the Special Master on the following grounds and for the following reasons amongst others:

1. The Master has erroneously overruled (2) the "Motion of The Kansas City Southern Railway Company to Require the Guardian Trust Company and its Receiver to Re-state Their Present Account and to Eliminate therefrom All
130 Items on Parts of Items not Properly taxable as Costs", which motion was filed before the Master on, to-wit: December 1, 1923.

2. The Master has erroneously overruled (45, 46) the written objections of the Exceptants read into the record upon the offer by the Trust Company of its vouchers, said objections appearing on Pages 7 to 42 inclusive, of the transcript.

Each and all of the items in the Trust Company's Statement of Account, complained of in these exceptions, and the evidence offered in support thereof, are subject to such written objections as specified therein.

3. The Master in his said report has erroneously stated and certified that costs as between solicitor and client may be taxed against the Exceptants; whereas, the Master should have found, under the facts and under the law, and under the principles, rules and practice in equity, and under the decision of the United States Circuit Court of Appeals in this case, and for the reasons set forth in the written objections of the Exceptants, and for other reasons, that costs as between solicitor and client should not be taxed herein.

4. The Master has erroneously refused (348, 491-499, 563 et seq.) to permit the Exceptants to prove that this litigation and the bills and petitions filed herein by the Exceptants and by the Receivers of the Kansas City Suburban Belt Railroad Company were instituted, filed and prosecuted in good faith and on reasonable grounds; and has erroneously refused

(712) to admit the evidence offered by the Exceptants set forth in their "Motion for Leave to Offer Evidence", filed with the Master on, to-wit: February 8, 1924, which evidence was offered by the Exceptants and excluded by the Master; and the Master has erroneously overruled said motion for leave to offer evidence. The proceedings in reference to said offers of evidence, and the rulings of the Master
131 thereon, are set forth on pages 705 to 712, inclusive, of the transcript of the evidence before the Master, and the evidence in said offer of proof is set forth in said "Motion for Leave to Offer Evidence."

5. The Master in the trial of this cause, over Exceptants' objections and exceptions, made and taken at the time, as shown by the record (7 to 47, inclusive, 393 to 397, inclusive, 400, 401, 443 to 446, inclusive, 729, 732), erroneously permitted the admission in evidence of the Trust Company's vouchers, and erroneously ruled that such vouchers were competent evidence not only as to the amounts purporting therein to have been paid, but as to the reasonable value of the service rendered, if any, and expenses, incurred, if any, and that such services and expenses, if any, were applicable to the issues on account of which the Master ruled that costs as between solicitor and client may be taxed.

6. The Master has erroneously ruled that many and large expenses and attorneys fees, which the Trust Company claims to have incurred and paid in this litigation, and other litigation, are taxable as costs as between solicitor and client, including expenses and fees incurred by, and services rendered to the Trust Company in procuring its claim for affirmative relief against the Kansas City Southern, and expenses and fees incurred in other courts, and in other causes; whereas, if costs as between solicitor and client may be taxed on any issues in this case, the Master should have separated the fees and expenses incurred on issues on account of which such costs may be taxable, if any, from the fees and expenses on account of issues for which they may not be taxed.

Exceptants' objections, in addition to their written objections, are set forth on pages 564 to 567, inclusive of the transcript.

132 7. The Master has erroneously failed to separately state the costs incurred and accrued up to and including the date of the final decree, from the costs incurred and accrued after that date, as prayed for by the Exceptants in their motion, referred to in Exceptants in their motion, re-

ferred to in Exception No. 1 hereof, and as directed by the Court of Appeals in this cause.

The Exceptants, in each of Exceptions 12 to 31, inclusive, adopt and make a part thereof each and all of the foregoing exceptions, together with exceptions 38 and 39. They adopt and make a part of Exceptions 8, 9 and 10, Exceptions 1, 2, 5 and 7.

8. The Master in his said report has erroneously stated and certified that he finds there should be taxed as costs as between party and party $170.80, on account of Item 57, the amount which the Trust Company claims to have paid to W. B. Lightburne, Shorthand Reporter, for services in reporting oral argument; whereas the Master should have found that said item should have been disallowed for the following reasons:

(a) There is no statute, law or rule providing for the taxing of such item as costs.

(b) There was no competent evidence that Special Master Douglass ordered Lightburne to report oral arguments for his own use; and there was no evidence that such expenditure was incurred with the understanding and agreement, between the parties or on the part of the Master, that such expenditure should be taxed as costs in the case.

(c) There was no proof of the reasonable value of the services rendered.

(b) The voucher offered in evidence (90-91) shows that a large part of this item was in payment for carbon copies of the argument in question. If any part of this item is taxable as costs, no allowance should be made for the carbon copies included in said item.

133 9. The Master in his said report has erroneously stated and certified that there should be taxed as costs as between party and party, $35.00 on account of Item 74, and $3.10 on account of Item 75, covering amounts claimed to have been paid for certified copies of records in the Cambria case; whereas, the Master should have found that said items, and each of them, should have been disallowed for the reasons stated in clauses (a), (b) and (c) of Exception No. 8 hereof, and for the additional reason that there was no identification of the records so copied; or any proof of the purpose in procuring such copies; or that there was any reasonable necessity therefor; or as to the reasonable value of

such copies, and because there is no statute or rule of court providing for the taxing of such items as costs.

10. The Master in his said report has erroneously stated and certified that there should be taxed as costs as between party and party, $5.00 on account of Item 76 and $5.00 on account of Item 78, covering amounts claimed to have been paid for opinions in cases in the United States Circuit Court of Appeals for the Eighth Circuit; whereas, the Master should have found that said items, and each of them, should have been disallowed for the reasons stated in clauses (a) and (c) of Exception No. 8; for the reasons stated in Exception No. 9; and for the further reason that this court has no right or authority to tax as costs as between party and party (or as between solicitor and client) any amount, or amounts, paid to the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit for copies of opinions in that court.

11. The Master in his said report has erroneously stated and certified that amounts which the Trust Company claims to have paid to its attorneys are taxable as costs herein; whereas, the Master should have found that the same are not taxable as costs for the following reasons, amongst others:

134 (a) Under the facts and under the law applicable to this cause, attorneys' fees, other than the $20.00 fee fixed by the statutes of the United States, are not taxable herein.

(b) No competent evidence was offered as to the reasonableness of any of said attorneys' fees.

(c) As to most of the items of attorneys' fee, no competent evidence was offered that the services, for which the Trust Company claimed to have paid such fees, were devoted to this litigation.

(d) No competent evidence was offered that the services, for which the Trust Company claimed to have paid such attorneys' fees, were devoted entirely to this litigation.

(e) No competent evidence was offered that the services rendered were devoted to issues upon which costs as between solicitor and client might be taxed, if any such costs might be taxed in these proceedings.

(f) No competent evidence was offered that the services rendered were devoted entirely to issues upon which costs

as between solicitor and client might be taxed, if any such costs might be taxed in these proceedings.

(g) The amounts which the Trust Company claims to have paid on account of such attorneys' fees included compensation for services for which costs as between solicitor and client may not be taxed herein, if any such costs may be taxed herein.

(h) The amounts which the Trust Company claims to have paid in some instances included compensation on issues and in proceedings for and in which attorneys' fees have been taxed by the United States Circuit Court of Appeals for the Eighth Circuit and by the Supreme Court of the United States; and this court has no right to tax attorneys' fees on account of such issues, nor in said courts.

135 (i) The amounts which the Trust Company claims to have paid on account of attorneys' fees included compensation for services for which costs as between solicitor and client may not be taxed herein, if any such costs may be taxed herein. No competent evidence was offered segregating the amount paid for services for which costs as between solicitor and client may be taxed herein, if any, from the amount paid for services for which costs may not be taxed herein.

The Exceptants, in each of Exceptions 12 to 18, inclusive, and 20 to 23, inclusive, adopt and make a part thereof this exception 11, and all of the grounds and reasons herein stated.

12. The Master in his said report has erroneously allowed and taxed as costs as between solicitor and client $1,000.00 on account of Item 81, amount which the Trust Company claims to have paid to Trimble & Braley; whereas, for the reasons stated in Exception 11 and the other exceptions adopted and made a part hereof the Master should have found that no part of the same was taxable.

Exceptants' objections to this item are set forth in its written objection (6 to 41-C).

13. The Master in his said report has erroneously allowed and taxed as costs as between solicitor and client $5343.75 on account of Item 82, being three-fourths of $7,125.00 allowed to Trimble & Braley as attorneys by Judge Thayer in the Bierce case, which Bierce case is not a part of these proceedings; whereas, the Master should have found

that said item, and no part of the same, was taxable as costs herein, for the following reasons:

(a) The Exceptants adopt and make a part hereof Exception 11 the other exceptions hereinbefore adopted, and each and all of the grounds and reasons stated in each and all of said exceptions. They further adopt and make a part hereof paragraphs (b), (c) and (g) of Exception 15, paragraphs (d), (e) and (f) of Exception 21 hereof, and each and all of the grounds and reasons stated in each and all of said exceptions.

(b) As stated in Exceptants' objections (266 to 269, inclusive) there was no competent or credible evidence
136 upon which to base the apportionment, to these proceedings, of any definite proportion of said sum of $7,125.00, allowed by Judge Thayer. The Trust Company's effort to apportion three-fourths of such allowance was based upon the testimony of witnesses who were in no position to give competent or credible evidence on the subject and whose present recollection was of no value as evidence.

Mr. C. A. Braley, a member of the firm of Trimble & Braley, undertook to testify that three-fourths of the time of Mr. Trimble, during the receivership in the present case, was givin to this litigation (269, 277 to 280, inclusive, 312, 315 to 323, inclusive), but his further evidence showed that he could not distinguish between this litigation and other litigation in which the Trust Company was then engaged (272, 310, 313 to 317, inclusive, 320, 321 to 325 inclusive 335), and that he had no recollection of some of the litigation in which the Trust Company was then involved which he himself was handling (328). The testimony of Mr. Braley that the firm of Trimble & Braley, during the time for which this allowance was made, was devoting a large amount of time to this litigation is directly contradicted by the pleading of Trimble & Braley filed in their suit against the Trust Company, in which pleading they made an itemized claim for services rendered, which itemized claim showed that Mr. Braley devoted four days' time to looking up facts in this litigation from October 8 to October 11, 1900 (912), and another days' time in preparation for the defense of this litigation on October 30, 1922 (917). The Trust Company filed its answer to the original bill in this cause in November, 1900 (314), and the taking of testimony in the cause began on January 15, 1903 (277, 314). It further appears from Mr. Braley's testimony (276) that although Mr. Trimble believed that the Cambria bill was subject to demurrer, he took the

accounting was all on the books, and would probably
137 not take any longer than it would to try out the legal point on demurrer.

A letter of Mr. Wash Adams, written at the time when this litigation was fresh in mind (653 et seq.), shows that he considered the services rendered in certain litigation in Texas were equal in value to the services rendered in this litigation. Mr. S. B. Willey, at one time Secretarp of the Trust Company, an accountant, undertook to testify as to the amount of time that Mr. Trimble was giving to this litigation (404-406, 408), but he also was unable to distinguish between this litigation and other litigation then going on (437 to 439, inclusive, 477), and he showed that he was ignorant of the Texas litigation (406 to 408, inclusive, 420) which was taking up a large part of Mr. Trimble's time; and his recollection was shown to be defective (413, 430, 431). It also appears that Mr. Willey was called and testified as witness on behalf of the complainants (441).

Mr. J. C. Rosenberger, counsel for the Trust Company, undertook to testify as to the comparative amount of time that was being given by Mr. Trimble to this litigation, during the time for which this allowance was made. Judge F. M. Black was the receiver of the Guardian Trust Company, appointed by Judge Thayer in the present case. Mr. Rosenberger was not connected with this litigation at that time, but he shared Judge Black's office. His opinion as to the proportion of Judge Trimble's time devoted to this litigation is based upon his observation of interviews between Judge Black and Judge Trimble in Judge Black's office, in which interviews Mr. Rosenberger sometimes participated (514, 519). He admitted that Judge Black spent parts of the day in the Trust Company's office (515). In various matters coming under Mr. Rosenberger's attenion, some of which would be particularly likely to be impressed upon his memory, his recollection was shown to be inaccurate (377, 378; 430; 453, 547; 457, 39, 40, 697, page 646 of printed record in Mecartney case).

138 The Exceptants' objections to said Item 82 are shown on pages 5 to 41-C, 266 to 269, inclusive, 278 to 280, inclusive, 514 to 519.

14. The Master in his said report has erroneously allowed and taxed as costs between solicitor and client $6,000.00 on account of Item 109, which the Trust Company claims to have

paid to its attorney, Mr. Wash Adams; whereas, the Master should have found that no such costs should have been taxed, for the following reasons:

(a) The Exceptants adopt and make a part hereof Exceptions 5 and 11, paragraphs (b), (c) and (g) of Exception 15, paragraphs (d), (e) and (f) of Exception 21, and the other exceptions adopted and made a part hereof, and each and all of the grounds and reasons stated in each and all of said exceptions.

(b) No competent evidence was offered by which it could be ascertained how much of the services of Mr. Adams, if any, were devoted to this litigation and how much thereof was devoted to the Texas litigation and other litigation in which he was acting as counsel, and for which he was recompensed in the amount which the Trust Company claims to have paid to him. The letter and bill of Mr. Adams (653 et seq.) shows that at least half of his services were devoted to the Texas litigation.

Exceptants' objections, in addition to their written objections to this item appear on page 419 of the transcript.

15. The Master in his said report has erroneously stated and certified that there should be taxed as costs as between solicitor and client herein $5,000.00 on account of Item 108; $5,000.00 on account of Item 111; $5,000.00 on account of Item 114; $5,000.00 on account of Item 116; and $7,500.00 on account of Item 117, which the Trust Company claims to have paid to its attorney, Mr. H. S. Mecartney; whereas the Master should have found that such items, and each and every part thereof, should have been disallowed, for the following reasons:

139 (a) The Exceptants adopt and make a part hereof Exceptions 5 and 11, and the other exceptions hereinbefore adopted and made a part hereof, and each and all of the grounds and reasons stated in each and all of said exceptions.

(b) The evidence with reference to these items showed that the amount which the Trust Company claimed to have paid to Mr. Mecartney covered services other than services in this litigation (351 et seq.) and covered issues in the Cambria case for which costs as between solicitor and client may not be taxed (214), if they be taxable on any issues in these proceedings.

(c) The evidence showed that Mr. Mecartney performed services for the Trust Company in litigation in Texas, which litigation was, by agreement between the Trust Company and the Kansas City Southern, settled and disposed of; and in that Texas litigation the court entered a decree wherein it was adjudged that the costs of such litigation were, by agreement, to be divided between the parties (365 to 374, inclusive).

(d) The evidence also showed that Mr. Mecartney performed services in suing the Kansas City Southern on a judgment in favor of the First National Bank of Kansas City, Missouri, and against the Trust Company (29, 691), which judgment was paid by the Trust Company and which the Kansas City Southern was eventually required to pay; but said First National Bank judgment was not involved in any of the issues in these proceedings on account of which costs as between solicitor and client may be taxed, if any such costs may be taxed herein.

(e) Mr. Mecartney also performed services in bringing suits in the state court to enforce claims of the Trust Company against the Kansas City Southern for Affirmative relief (200 et seq., 208, 212).

140 (f) Mr. Mecartney also performed services in injunction proceedings instituted in the Federal Court (210, 202, 209, 210) to enjoin the prosecution of said state court cases, which injunction cases were appealed to the United States Court of Appeals for the Eighth Circuit, and decided by that court, and that court fixed the attorneys' fees to be allowed in such cases in the Court of Appeals, which attorneys' fees were paid by the Kansas City Southern and received by the Trust Company (645 to 649, inclusive).

(g) Other services were rendered by Mr. Mecartney as shown in the amended petition in his suit for services against the Trust Company. (192 et seq.)

The Master has erroneously stated that the District Court has under consideration this Texas litigation, when, as a matter of fact, that litigation and the disposition of it were not presented to the District Court, or considered by it in its opinion.

16. The Master in his said report has erroneously allowed and taxed as costs as between solicitor and client $3,000.00 on account of Item 119; $4,000.00 on account of Item 120; $2,000.00 on account of Item 121; $3,000.00 on account of Item

122; $4,000.00 on account of Item 123; $4,000.00 on account of Item 125; $7,500.00 on account of Item 128; $5,000.00 on account of Item 130; $5,000.00 on account of Item 133, and $5,859.40 on account of Item 137, which the Trust Company claims to have paid to its attorneys, Gates & English; whereas, the Master should have found that no such costs should have been taxed, for the following reasons:

(a) The Exceptants adopt and make a part hereof Exceptions 5, 7, 11 and 19 and paragraph (c) of Exception 18, and the other exceptions heretofore adopted and made a part hereof, and each and all of the grounds and reasons stated in each and all of said exceptions; and that the reasons stated in paragraph (f) of Exception 15, which is adopted as a part hereof, applicable to the claim of Mr. H. S. Mecartney are applicable to the claim of Messrs. Gates & English.

141 (b) The services, if any, rendered by Gates & English were rendered after all of the evidence had been taken in this litigation and after the case had been submitted (716) to Special Master Douglass, before whom the original hearing was had.

(c) The services of Messrs. Gates & English, if any, were devoted entirely, or almost entirely, to the assertion by the Trust Company of its claim for affirmative relief against the Kansas City Southern.

17. The Master in his said report has allowed and taxed as costs as between solicitor and client $1,000.00 on account of Item 124, $1,500.00 on account of Item 126; and $1,000.00 on account of Item 129, which the Trust Company claims to have paid to Mr. D. J. Haff; whereas, the Master should have found that no such costs should have been taxed. The Exceptants adopt and make a part hereof Exception 16 and all of the exceptions therein referred to, and all of the grounds and reasons stated in each and all of said exceptions.

18. The Master in his said report has erroneously allowed and taxed as costs as between solicitor and client $200.00 on account of Item 131, the amount which the Trust Company claims to have paid to Messrs. Clephane & Clephane, attorneys for the Trust Company, for services in the United States Supreme Court; $1,000.00 on account of Item 132, and $15,000.00 on account of Item 134, which the Trust Company claims to have paid to Mr. F. W. Lehmann, an attorney of the Trust Company, for services in the United States Supreme Court; whereas, the Master should have found that no such costs should have been taxed, for the following reasons:

(a) The Exceptants adopt and make a part hereof Exceptions 5, 11 and 19 and the other exceptions hereinbefore adopted as a part hereof, and each and all of the grounds and reasons stated in each and all of said exceptions.

142 (b) That said services, if any, of the attorneys mentioned in this litigation, were performed in this litigation in the Supreme Court of the United States, at which time there was left in this litigation the sole question of whether the Trust Company was entitled to affirmative relief against the Kansas City Southern.

(c) This court has no authority to tax as costs attorneys' fees for services rendered in another court. The attorneys' fees to be taxed for the services of the attorneys for the Trust Company have been taxed by the Supreme Court of the United States, and this court has no authority to re-tax the same, or to readjudicate the same.

Exceptants' objections, in addition to their written objections are set forth on pages 429, 430, 886, et seq., of the transcript.

19. The Master erroneously admitted in evidence, over the written (42 to 41-C) and oral (186 to 192, inclusive, 281 to 283, inclusive, 305 to 309, inclusive, 400 et seq.) objections of the Exceptants, judgments, opinions and orders of the courts in several cases and proceedings involving and fixing the fees (and in at least one case, the expense) of the attorneys of the Trust Company, and erroneously held that said judgment, opinions and orders were conclusive against the Exceptants, and that the Exceptants were liable to the Trust Co. for the full amount of the fees (and expenses) in said judgments, opinions and orders; and erroneously refused (719 et seq.) to grant the Exceptants any hearing or trial of the issues involved in said judgments, opinions and orders, suits or proceedings; and erroneously held that said judgments, opinions and orders were competent evidence as against these Exceptants; when, in fact, and in law and in equity, said judgments, opinions and orders were neither conclusive nor binding as against the Exceptants, or competent evidence against them, for the following reasons:

(a) Neither of the Exceptants was directly, or indirectly, a party to any of such judgments, opinions or orders, or the suits or proceedings in which they were rendered or made, and neither of the Exceptants was ever notified to defend said suits or proceedings, or any of them.

143 (b) No competent evidence was offered as to the reasonable value, if any, of the services rendered by the plaintiff or plaintiffs, or claimant or claimants, in any of such judgments, opinions or orders, and no competent evidence was offered as to what part of the services rendered or expenses incurred was devoted to this litigation, nor as to what part of such service or expenses, if any, was devoted to issues as to which costs as between solicitor and client might be allowed, if any such costs may be allowed on any issues in this proceeding.

(c) The evidence offered before the Master showed that the plaintiffs or claimants in said judgments, opinions, and orders were, in some cases (see Exceptions 13, 14 and 15) being paid for services to the Trust Company in litigation in Texas, and elsewhere, as in one case (see Exception 21) that the plaintiff was being paid for services for which some of his attorneys' fees had been taxed and paid.

Exceptants' objections, in addition to their written objections, are shown on pages 188 to 192, inclusive, 281 to 283, inclusive, 300 to 309, inclusive, and 400 et seq., of the transcript.

The Exceptants, in each of Exceptions 20 to 25a, inclusive, hereof, adopt and make a part hereof this Exception 19, and each and all of the grounds and reasons herein stated.

20. The Master in his said report has erroneously allowed and taxed as costs on account of Item 127 $9,555.74, being the amount which the Trust Company claims to have paid to Messrs. Trimble & Braley by virtue of a judgment in their favor against the Trust Company; whereas, the Trust Company should have found that no part of such item should have been allowed or taxed, for the reasons hereinafter stated.

The Exceptants adopt and make a part hereof exceptions 5, 11 and 19, paragraphs (b), (c) and (g) of exception 15, paragraphs (b), (c), (d), (e) and (f) of exception 21, and
144 the other exceptions adopted and made a part hereof, and each and all of the grounds and reasons stated in each and all of said exceptions.

Exceptants' objections to this item, in addition to their written objections, are set forth on pages 281, 282 and 305 to 310 of the transcript.

21. The Master in his said report has erroneously allowed and taxed as costs $135,013.56 on account of Item 135, which amount the Trust Company claims to have paid to Mr. H. S. Mecartney, its attorney, in payment of a judgment rendered

by the Circuit Court of Jackson County, Missouri, in his favor ($127,268.49 being for services and $7,745.07 being for expenses); whereas, the Master should have found that no allowance should have been made on account of such items, for the following reasons:

(a) The Exceptants adopt and make a part hereof Exceptions 5, 11 and 19, and the other exceptions adopted and made a part hereof, and each and all of the grounds and reasons herein stated.

(b) No proof was ever made of the claim on account of said item other than the judgment with certain pleadings and proceedings in the suit in which such judgment was entered, and the voucher and attachments thereto, purporting to evidence the payment of such judgment, and the opinion of the Supreme Court of Missouri in said action.

(c) Neither of the Exceptants was a party to said proceedings and the said judgment was not binding on them or evidence against them.

(d) No proof was made as to the reasonable value, if any, of the services rendered by Mr. Mecartney, and no proof was made as to what parts of the services rendered were devoted to this litigation.

145 (e) No proof was made as to what part of the services rendered in this litigation were devoted to issues for which costs as between solicitor and client might be allowed, if any such costs might be allowed on any issue in this cause.

(f) The evidence showed the services for which Mr. Mecartney was paid included services performed for the Trust Company in litigation in Texas (202 to 206, 351 et seq., 681, et seq., 548 et seq., 661 et seq.).

(g) The amount paid to Mr. Mecartney included compensation for services in the Federal Court of Appeals, in which court the attorneys' fees had been taxed and adjudged by that court.

Exceptants' objection in addition to their written objection are shown on pages, 188 to 192, 263, 281, 358, 359, 400 et seq., 488, 527-531, 552, 553, 566, 719, et seq.

22. The Master in his said report has erroneously allowed and taxed as costs as between solicitor and client $47,000.00 on account of Item 136, which amount the Trust Com-

pany claims to have paid to Mr. H. S. Mecartney in conformity with a judgment in his favor against the Trust Company rendered by the Federal Court; whereas, the Master should have found that no part of such item should have been allowed or taxed, for the following reasons;

(a) The Exceptions adopt and make a part hereof Exceptions 5, 11 and 19, paragraphs (b) and (c) of Excetpion 16, and paragraph (c) of Exception 18, and the other exceptions adopted and made a part thereof, and each and all of the grounds and reasons stated in each and all of said exceptions.

(b) The services rendered by Mr. Mecartney, for which he recovered said judgment, were devoted entirely to the question of whether or not the Kansas City Southern was liable to the Trust Company for the debts of the Kansas City Suburban Belt Railroad Company, which question was involved in the effort of the Trust Company to procure affirmative relief against the Kansas City Southern.

146 The Exceptants' objections, in addition to their written objections, are set forth on pages 349 of the transcript.

23. The Master in his said report, while stating that he has disallowed Item 110, $10.00, the amount which it is claimed was paid to D. W. Amram, an attorney; Item 112, $250.00, the amount which it is claimed was paid to Mr. C. O. Tichenor, an attorney; Item 113, $150.00, which it is claimed was paid to Messrs. Sullivan & Cromwell, attorneys; Item 115, $350.00, which it is claimed was paid to C. H. Aldrich; and Item 118, $250.00, which it is claimed was paid to Mr. James C. Jones, an attorney, has, in fact, erroneously allowed each and all of said items, and included the same in Item 135 (see Exceptants' Exception 21); whereas, the Master should have disallowed each and all of said items, for the following reasons;

(a) The Exceptants adopt and make a part hereof Exceptions 5, 11, 19 and 21, and each of the other exceptions adopted and made a part hereof, and each and all of the grounds and reasons stated in each and all of said exceptions.

24. The Master in his said report, while stating that he has disallowed Items 33, 25 to 40, inclusive, 42 to 56, inclusive, 58 to 67, inclusive, 110, 112, 113, 115, 118, 138 to 164, inclusive, 182 to 199, inclusive, 201, 211 to 245, inclusive, and 251 to 411, inclusive (amounting to $7,745.07), being for copies of documents, etc., docket fees, printing costs, attor-

neys' fees described in Exception 23 hereof, printing fees, accountants' fees, traveling expenses, etc., has, in fact, erroneously allowed each and all of said items and included the same in Item 135; whereas the Master should have disallowed each and all of said items, for the following reasons:

(a) The Exceptants adopt and make a part hereof Exceptions 5, 19 and 21, and each of the other exceptions
147 adopted and made a part hereof, and each and all of the grounds and reasons stated in each of said exceptions.

(b) The Exceptants have had no hearing, and there has been no determination in any proceeding to which they were parties, as to whether or not said expenditures were, in fact, made by the Trust Company, or its attorneys; nor as to the reasonable value of said items; nor as to whether or not such expenditures, if any, or any of them, were applicable to this case, or were applicable to issues as to which costs as between solictior and client may be taxed, if any such costs may be taxed in this proceeding.

25. The Master in his said report, while stating that he has disallowed Items 36, 54, 251 to 411, inclusive (which items are referred to in Exception 24), has, in fact, erroneously allowed each and all of said items, and included the same in Item 135; whereas the Master should have disallowed said items, and each of them, for the following reasons:

(a) The Exceptants adopt and make a part hereof Exceptions 5, 19, 21 and 24, and each of the exceptions adopted and made a part hereof, and each and all of the grounds and reasons stated in each and all of said exceptions.

(b) Item 36, $3.00, and Item 54, $5.00, are docket fees paid by the Trust Company for filing suits in the Circuit Court of Jackson County, Missouri, at Kansas City, in which the Trust Company was seeking affirmative relief against the Kansas City Southern for both of which reasons they are not taxable as costs herein.

Items 251 to 411, inclusive, consist largely of traveling expenses of the attorneys of the Trust Company to and from Chicago, and expenses incident to the employment, by the Trust Company, of Mr. H. S. Mecartney, a lawyer living in Chicago, to take charge of this litigation pending at Kansas City, Missouri. The traveling expenses, and other expenses incident to such employment, are not a reasonable or proper

charge, and ought not be taxed as costs as between
148 solicitor and client in these proceedings, if any costs as between solicitor and client may be taxed herein.

25a. The Master in his said report, while stating that he has disallowed Item 42, $25.00, paid to J. D. Jordan for docketing appeal from injunction order, and Item 43, $547.00, paid to J. D. Jordan for printing fees for printing record on appeal from order of injunction (which are referred to in Exception 24), has, in fact, erroneously allowed each of said items, and included the same in Item 135; whereas the Master should have disallowed said items, for the following reasons:

(a) In addition to the other exceptions heretofore adopted and made a part hereof, the Exceptants adopt and make a part hereof Exceptions 21 and 24.

(b) Said Items 42 and 43 were included in the costs taxed by the Court of Appeals in the proceeding in which they were paid, and were paid by the Kansas City Southern when that proceeding was decided against it (645, 646).

26. The Master in his said report has erroneously allowed and taxed as costs $5.00 on account of Item 200 and $5.00 on account of Item 202, premium on appeal bonds from orders of injunction; whereas the Master should have found that no such costs should have been taxed, for the following reasons:

(a) No competent evidence was offered showing that the amounts which the Trust Company claims to have paid were reasonable.

(b) No competent evidence was offered tending to show that such expenditures were devoted to issues upon which costs as between solictior and client might be taxed, if any such costs may be taxed in these proceedings.

(c) No competent evidence was offered tending to
149 show how much of such expenditures were devoted to such taxable issues, if any.

(d) The Court of Appeals has taxed the costs to be taxed in the proceedings in which said appeals bonds were given, which costs have been paid, and this court has no right or authority to re-tax the same.

27. The Master in his said report has erroneously allowed and taxed as costs $175.00 on each of Items 203, 204, 205, 206, 207; $112.50 on Item 208; $43.75 on Item 209; and $175.00 on

Item 210, premiums on appeal bonds from the final decree of June 25, 1910, of the Circuit Court in this cause; whereas the Master should have found that none of said items, or any [party] thereof, should have been taxed, for the following reasons:

(a) The Exceptants adopt and make a part hereof Exception 5, and all of the grounds and reasons thereof.

(b) No competent evidence was offered showing that the amounts which the Trust Company claims to have paid were reasonable; or that such expenditures were devoted to issues upon which costs as between solicitor and client might be taxed, if any such costs might be taxed in these proceedings; nor how much of such expenditures, if any, was devoted to such taxable issues, if any.

(c) Said appeal bonds were given after the final decree of June 25, 1910, herein, upon the appeal of the Trust Company, wherein the Trust Company was seeking to enforce its claim for affirmative relief against the Kansas City Southern and after the final determination of the issues upon which the Trust Company claims the right for the taxation of costs as between solicitor and client.

28. The Master in his said report has erroneously allowed and taxed as costs the amounts claimed in Items 412 to 417, inclusive, 418, 420, 421 and 422, being traveling expenses of Messrs. Gates & English, attorneys of the Trust Company; whereas the Master should have found that no allowance should have been made on account of said items, or any of them, for the following reasons:

(a) The Exceptants adopt and make a part hereof Exception 5, and all of the grounds and reasons therein stated.

(b) No competent evidence was offered showing that said payments were made, or for what purpose they were made, or whether the amounts claimed or paid were reasonable.

(c) Such expenses were incurred after the final decree of June 25, 1910, and, for the reasons stated in Exceptions 16 and 27 hereof, such items are not properly chargeable as costs as between solicitor and client, if such costs are taxable on any issues in this proceeding.

29. The Master in his said report, while stating that he his disallowed Items 182 and 183, $450.00 and $50.00, respectively, which it is claimed were paid to F. B. Wilcox, has, in fact, erroneously allowed each and all of said items, and in-

cluded the same in Item 135; whereas the Master should have disallowed each and all of said items, for the following reasons:

(a) The Exceptants adopt and make a part hereof Exceptions 19, 21 and 24, and each and all of the grounds thereof.

(b) The evidence showed that Mr. F. B. Wilcox was called as a witness on behalf of the complainants (441). In the testimony of Mr. H. S. Mecartney it appeared that Mr. Wilcox undertook to give evidence on behalf of the Trust Company which would satisfactorily explain an item amounting to $89,333.33, for one-half of one per cent of such item (461 et seq. 39), which item was saved to the Trust Company largely by his evidence. In the circumstances the Master should not have allowed this item without a full and satisfactory explanation of the payment.

30. The Master in his said report, while stating that he has disallowed Item 284, $25.00, paid to McDonald for a copy of the Knott letter, has, in fact, erroneously allowed each and all of said item, and included the same in Item 135; whereas the Master should have disallowed each and all of said
151 item, for the following reasons:

(a) The Exceptants adopt and make a part hereof exceptions 19, 21 and 24, and each and all of the grounds thereof.

(b) No sufficient showing was made as to why the Trust Company should have paid $25.00 for procuring a copy of the Knott letter (Transcript 569-571).

31. The Master in his said report has erroneously allowed and taxed as costs $55.95 on account of Item 165, amount claimed to have been paid to John C. Bovard for printing briefs filed with special Master; whereas, the Master should have disallowed this item for the reasons stated in the exceptions adopted and made a part hereof.

32. The Master in his said report has erroneously allowed and taxed as costs $24.60 on account of Item 166; $6.00 on account of Item 167; $10.00 on account of Item 168; $71.00 on account of Item 169; $42.45 on account of Item 170; $70.00 on account of Item 171; $9.90 on account of Item 174, and $19.80 on account of Item 178, which the Trust Company claims to have paid for printing briefs; whereas the Master should have disallowed each and all of said items, for the following reasons:

In addition to the exceptions adopted and made a part hereof, the Exceptants adopt and make a part hereof paragraphs (b) and (c) of Exception 16 and (b) and (c) of Exception 18.

33. The Master erroneously excluded the following evidence offered by the Exceptants:

(a) Petition in case of Charles E. Grannis, et al., vs. Kansas City, Pittsburg & Gulf Railroad Company, et al., (827).

(b) Opinion of Judge Thayer in Bierce case filed November 30, 1901 (836).

(c) Opinion of Judge Thayer in Bierce case filed October 1, 1901 (844).

152 (d) Extract of testimony of Mr. Wilcox on original hearing (856).

(e) Letters to Mr. S. B. Willey of March 28, 1917, and from Mr. Justin D. Bowersock of April 5, 1917, and of August 18, 1918 (957, 958).

34. The Master in his said report has erroneously stated and certified that in the entry of the decree to be entered herein, the Trust Company should be allowed 2 per cent interest on the sum of $7,162.40, upon the claim of the Trust Company; that the interest on a note for $7,162.40, dated October 23, 1899, was figured in the final decree at 6 per cent, when, in fact, said note should have borne 8 per cent interest. The Exceptants except to this ruling, for the following reasons:

(a) The amount fixed by the final decree was based upon the answer of the Trust Company in which it asked for interest on said note at the rate of 6% per annum, and said answer has never been amended.

(b) The Trust Company's exceptions to the final decree made no complaint o fthe ruling of the court in regard to said note, or the interest thereon; no appeal was ever taken on that issue; and the judgment of the District Court was affirmed by the Federal Court of Appeals. Neither the Master nor this court has any jurisdiction or authority to make any finding in favor of the Trust Company on account of said note.

(c) If the final decree was erroneous with reference to the amount of interest to be allowed on said note, and can

now be corrected, a new decree should be entered and interest should be computed from the date of the indebtedness, established by said decree, and not compounded as of the date of the final decree of June 25, 1910, and any interest thus compounded should be credited to the Kansas City Southern.

The Exceptants' objections upon this issue are set forth on pages 970 et seq. of the transcript.

153 35. The parties to this proceeding entered into a stipulation providing for the payment of the costs of reporting the evidence in this case and of making the transcript for the Master. It was agreed in that stipulation that the Kansas City Southern should advance the costs of the transcript, and that the Trust Company should reimburse it immediately for the amount thereof, which should be paid by the Trust Company, and that, in case of a dispute as to the amount, the Master should ascertain the same. The Kansas City Southern has paid for all of said transcript; the Trust Company has paid for none. The Master has failed to make any order with reference to such reimbursement. The Trust Company should immediately reimburse the Kansas City Southern to the extent of $327.30.

36. In considering Item 108, the Master states that he finds that the Channel and Dock litigation in Texas was, under the memorandum opinion and order appointing this Master, part and parcel of the plan of The Kansas City Southern Railway Company and its representative, the Provident Life and Trust Company, to despoil the Guardian Trust Company of its property. The Exceptants, denying that either in the proceedings in which these exceptions are filed, or in any other litigation, was there any plan or purpose of The Kansas City Southern Railway Company or the Provident Life and Trust Company to despoil the Guardian Trust Company of its property, further state that there was no competent or credible evidence that the Channel and Dock litigation in Texas was a part and parcel of any such plan.

The Exceptants further state that the Master has failed to give consideration to the fact that all of the issues involved in the Texas litigation, including the question of costs and attorneys' fees, were settled by agreement between the parties, which agreement was confirmed and established by the decree of the Federal Court in Texas, in which
154 such Texas litigation was pending.

37. The Master has erroneously found that the Kansas City Southern is entitled to interest on the sums

$737.02 and $3,874.47 from April 15, 1916, to the date of entering of final decree herein. As the Trust Company has appropriated said sum of $737.02 on October 25, 1902, and said sum of $3,874.47 on March 20, 1905, which appropriations therefore constituted payments on the indebtedness found to be due to the Trust Company from the Kansas City Suburban Belt Railroad Company as of the dates of such appropriations, the Master should have found that the Kansas City Southern is entitled to said sum of $737.02, with interest thereon from October 25, 1902, to June 25, 1910, the date of the original final decree, and to said sum of $3,874.47, with interest thereon from March 20, 1905, to June 25, 1910, and to interest in said sums from June 25, 1910, to the date of the final decree to be entered herein. As such amounts should be considered as payments on said indebtedness, the rate of interest should be proportioned to the interest which the Kansas City Southern was compelled to pay on the debts which the Kansas City Suburban Belt Railroad Company was held to owe to the Trust Company.

38. The allowance and taxation by the Master of costs as between solicitor and client is in effect and in fact as assessment of damages against the Exceptants; and if the Trust Company were entitled to any such damages (which the Exceptants deny) the amount of such damages may not lawfully exceed the penalty of the injunction bond of $10,000.00 given in this proceeding. The Master has erred in ruling that costs as between solicitor and client may be taxed in this proceeding, and if any such costs were taxable he has erred in assessing such costs in excess of $10,000.00.

39. The allowance by the Master of so-called costs as
155 between solicitor and client is in effect, and in fact, an assessment of damages against the Exceptants; and the allowance of such so-called costs without any pleading and without any statement of the issues upon which the claim for such allowance is based, and without any hearing on the issues upon which it is claimed such allowance is made, and without affording to the Exceptants any right to a trial by jury, is unlawful and in violation of the 5th and 7th amendments to the Constitution of the United States.

Wherefore, The Kansas City Southern Railway Company and the Cambria Steel Company do except to the report

of the Special Master, and appeal therefrom to the judgment of this Court.

FRANK H. MOORE
CYRUS CRANE
A. F. SMITH
Attorneys for Exceptant, The Kansas City Southern Ry. Co.

R. E. BALL
Attorney for Exceptant, Cambria Steel Company.

Filed in the District Court of United States, October 4, 1924.

Final Decree.

156 (Filed in U. S. District Court on May 15, 1926.)

In the District Court of the United States, for the Western Division of the Western District of Missouri.

Cambria Steel Company, Complainant,
No. 2468 vs. In Equity.
The Kansas City Suburban Belt Railroad Company, et al, Defendants.

This day this cause came on to be further heard, at this term, for a decree herein, pursuant to the opinion of the United States Circuit Court of Appeals for the Eighth Circuit, filed respectively on October 22, 1912, and December 2, 1913, as modified by order of January 22, 1914, and reported respectively in Vol. 201 of Federal Reports, page 811 and following, and Vol. 210 of Federal Reports, page 696 and following, and the opinion of the Supreme Court of the United States filed February 21, 1916, and reported in Vol. 240 of United States Reports, page 166, and following, and the mandate of the Supreme Court of the United States of April 13, 1916, filed with the Clerk of this court April 18, 1916, all of the parties appearing in person or by their solicitors, and was argued by counsel, and thereupon, upon consideration thereof,

It is ordered, adjudged and decreed that the first five paragraphs of the final decree entered in this court on, to-wit, the 25th day of June, 1910, herein referred to as the "Original Decree", be and the same are hereby ordered again decreed, except as hereinafter modified, and the remainder of said decree is hereby reversed and set aside, except as

hereinafter provided, and it is ordered, adjudged and decreed as follows:

157 1. It was found by the Circuit Court of Appeals for the Eighth Circuit in its opinion in this cause in 210 Federal Reporter 696, that the Kansas City Southern Railway Company on June 25, 1910, was indebted hereunder to the Guardian Trust Company or its Receiver, for the amount of indebtedness of The Kansas City Suburban Belt Railroad Company to the Guardian Trust Company, that is to say, in the sum of $639,658.86 together with interest thereon from June 25, 1910, as follows: Upon $473,723.59 at 6 per cent per annum, upon $46,565.76 at 7 per cent per annum, and on $119,369.51 at 8 per cent per annum, subject to a credit hereafter stated, together with the costs of this suit, the total amount of said indebtedness as computed on the basis as found by the Court of Appeals, on April 15, 1916, being the sum of $878,892.54, and this court now makes the same finding, except that there was included in said indebtedness bearing interest at the rate of 6 per cent per annum a note for $7,162.40 dated October 23, 1899, when said note in fact bore interest at the rate of 8 per cent per annum. This court accordingly finds that said indebtedness of The Kansas City Southern Railway Company to the Guardian Trust Company exceeded the amount as found by the Court of Appeals by the amount of 2 per cent interest on $7,162.40, from October 23, 1899, to the date of this decree, to-wit: $3,804.82. The Court of Appeals in said opinion also found that there should be deducted from said indebtedness the sum of $40,001.25, referred to in paragraph V of the Original Decree herein of June 25, 1910, together with all interest which has accrued and should accrue, has been and should actually be earned on said sum, and it is ordered that such deduction be made accordingly.

II. It has been made to appear to the satisfaction of the Court, that The Kansas City Southern Railway Company on April 15, 1916, paid to the Guardian Trust Company, on account of said indebtedness and interest, the sum of

158 $821,623.28, such sum being then agreed to be an approximation of the amount of said indebtedness and subject to check and correction in order to arrive at the true and correct amount thereof.

The Court further finds that in accounting for the interest collected by the Guardian Trust Company, on said sum of

$40,001.25, the Guardian Trust Company failed to account for $737.02, interest which it collected and converted to its own use on October 25, 1902, and it also failed to account for $3,874.47, interest which it collected and converted to its own use on March 20, 1905; the Court further finds that the Guardian Trust Company is indebted to The Kansas City Southern Railway Company in said sum of $737.02, with interest thereon at 6 per cent per annum from October 25, 1902, to the date of this decree, amounting to $1,778.65; the Court further finds that the Guardian Trust Company is indebted to The Kansas City Southern Railway Company in the sum of $3,874.47, with interest thereon at 6 per cent per annum from March 20, 1905, to the date of this decree, amounting to $8,791.81, the total amount of said indebtedness of the Guardian Trust Company to The Kansas City Southern Railway Company being $10,570.46.

III. The Court further finds that by reason of the overpayment made as aforesaid by The Kansas City Southern Railway Company to the Guardian Trust Company of April 15, 1916, the Guardian Trust Company is now indebted to The Kansas City Southern Railway Company in the sum of $6,765.54.

IV. The Guardian Trust Company shall forthwith deliver to The Kansas City Southern Railway Company all the collateral security described in paragraph V of the Original Decree, and all the proceeds of such security, with all interest earned thereon, which shall not have been disposed of
159 or applied on said judgment. The balance (to-wit: $1,779.02) of the money deposited in the registry of the court by the Receiver of the Central Improvement Company, in accordance with paragraph IX of the Original Decree, shall be forthwith paid over to and retained by The Kansas City Southern Railway Company. The money paid into the registry of the court by the Receiver of the Northern Townsite Company, in accordance with paragraph IX of the Original Decree has been turned over to the officers of the Northern Townsite Company in accordance with the previous order of this Court, which is hereby approved. The Court finds that The Kansas City Southern Railway Company is the owner of 439 of the 1000 shares of the Northern Townsite Company and is entitled to its distributive share of the assets of the Northern Townsite Company. The court further finds that the Officers of the Northern Townsite Company have in the First National Bank of Kansas City, Missouri, $9,436.27 to which fund The Kansas City Southern Railway Company is entitled. The Court hereby orders that such

distributive share of The Kansas City Southern Railway Company shall be paid over to The Kansas City Southern Railway Company subject to the payment of the costs herein taxed against The Kansas City Southern Railway Company. The Court further orders that out of said distributive share and said balance of $6,765.54 due from the Guardian Trust Company to The Kansas City Southern Railway Company said costs taxed against The Kansas City Southern Railway Company shall be paid and the balance thereof shall be paid over to The Kansas City Southern Railway Company.

V. The action of the Central Improvement Company and its Receiver in conveying the real estate and property described in paragraph VI of the Original Decree to The Kansas City Southern Railway Company is hereby approved and confirmed.

VI. Paragraph XI of the Original Decree is again ordered adjudged and decreed, except that the taxation of costs is made in this decree.

160 VII. The Court finds that the costs herein (other than the costs of the hearing before Honorable Henry D. Ashley as Special Master), shall be taxed against The Kansas City Southern Railway Company in the sum of $13,303.22 with interest on the amount paid Hon. Shannon C. Douglass, Special Master, of $3,520.71, making a total sum of $16,823.93. The Court finds that the costs of the hearing before Honorable Henry D. Ashley, Special Master, shall be taxed against the Receiver of the Guardian Trust Company. The stenographers' fees on such hearing, amounting to $486.00, having been advanced by The Kansas City Southern Railway Company, it shall recover the same from the Receiver of the Guardian Trust Company. The allowance of $2,579.30 made by this court to said Special Master, has been paid by the Receiver.

VIII. This decree shall be a complete accord and satisfaction of all claims and demands and a final adjudication of all issues in this proceeding.

IX. This court shall retain full jurisdiction of this cause to render such further decrees and to take such subsequent proceedings in this suit as equity and good conscience may require.

ARBA S. VAN VALKENBURGH
Judge.

May 14, 1926.

Filed in the District Court of the United States, May 15, 1926.

161 Petition for Appeal by Guardian Trust Company.

To the Honorable Judges of the District Court of the United States within and for the Western Division of the Western District of Missouri:

Now comes the Guardian Trust Company, by Henry C. Flower, Receiver, by Justin D. Bowersock, counsel, and respectfully shows to the Court: That said Trust Company by its Receiver feels itself aggrieved by the final decree in the matter of the above proceedings in equity in this Court, entered on the 15th day of May, A. D. 1926, and hence
162 the said Trust Company, by its Receiver, prays that an appeal may be allowed the Trust Company, by its Receiver, from said final decree to the United States Circuit Court of Appeals for the Eighth Circuit, for the reasons specified in the Assignment of Errors filed herein, which said Company here presents in connection with said petition.

GUARDIAN TRUST COMPANY,
By Henry C. Flower
Its Receiver.

Justin D. Bowersock
Solicitor.

Order Allowing Appeal.

The foregoing petition for an appeal is allowed, and it is ordered that the amount of the bond to be filed by said Appellant, Guardian Trust Company, be and the same is hereby fixed in the sum of $500.00.

Dated this 18th day of June, 1926.

ARBA S. VAN VALKENBURGH
Judge.

Filed in the District Court of the United States, June 18th, 1926.

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164 Assignment or Errors.

Now comes Guardian Trust Company, Appellant in the above entitled matter, by Henry C. Flower, Receiver, by Justin D. Bowersock, their solicitor, and in connection with its petition for appeal says that in the record, proceedings and final decree rendered by the Court in the above entitled cause on the 15th day of May, 1926, manifest error has intervened to the prejudice of Appellant as follows:

1. The Court erred in not allowing the claims of the Guardian Trust Company set forth in the claim and supplemental claim filed before the Master on October 23, 1922, and each and every item thereof, and in refusing to tax the said items and each of them as costs in said litigation, and in not entering a decree for such items and each of them as costs in favor of Appellant.

2. The Court erred in ruling that the Appellant was not entitled to have its said items of costs and expenses and counsel fees, and each of them, taxed in favor of said Trust Company as costs as between solicitor and client.

3. The Court erred in not following the decree of the United States Circuit Court of Appeals of the Eighth Circuit in * * * the above entitled cause, as affirmed by the United States Supreme Court, that the said litigation filed and prosecuted by the Cambria Steel Company, the Kansas City Belt Railroad Company, and the Kansas City Southern Railway Company and the subsidiary companies acting under and instigated by them, was trivial, malicious and oppressive, and prosecuted each and all in bad faith, and that, by reason thereof, the Guardian Trust Company was entitled to have the costs, outlays and expenses in said cause and liti-
165 gation taxed in its favor as between solicitor and client.

4. For the reason that the Court erroneously failed and refused in said decree to tax against the Cambria Steel Company, the Kansas City Southern Railway Company, the Kansas City Suburban Belt Railroad Company, et al., and in favor of the Guardian Trust Company, each and all of the following items of costs shown in the claim and supplemental claim of H. C. Flower, Receiver, filed before the Master on October 23, 1922, to-wit:

Items 4 to 32 inclusive, partially disallowed in the amount of $3948.93.

Items 35 to 78 inclusive.

5. For the reason that the Court erroneously failed and refused in said decree to tax against the Cambria Steel Company, the Kansas City Southern Railway Company, the Kansas City Suburban Belt Railroad Company, et al., and in favor of the Guardian Trust Company, each and all of the following items of costs shown in the claim and supplemental claim of H. C. Flower, Receiver, filed before the Master on October 23, 1923, to-wit:

Items 81-443 inclusive.

6. The said final decree is as against Appellant inequitable and unjust, insofar as it relates to matters of costs.

7. The Court erred in not sustaining each and all of the exceptions of Appellant filed to the report of the Special Master upon the question of costs and in not overruling each and all of the exceptions of the Kansas City Southern Railway Company to said report.

Wherefore, the Appellant prays that said final decree
166 be reversed and that said District Court be ordered to enter a decree allowing said costs as claimed by Appellant.

JUSTIN D. BOWERSOCK
Solicitor for Appellant.

Filed in the District Court of the United States June 18, 1926.

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167 Order Allowing Appeal

Now comes Guardian Trust Company, by Henry C. Flower, its Receiver, and this day presents to the Court its petition for appeal and assignment of errors, and moves the Court for an allowance of an appeal to the United States Circuit Court of Appeals for the Eighth Circuit from
168 the final decree entered in the above case on the 15th day of May, A. D., 1926.

It Is Ordered By The Court that said appeal be, and the same hereby is, allowed to the said United States Circuit Court of Appeals, upon said Appellant, Guardian Trust Company, filing bond in the sum of $500.00, with surety to be approved by the Court or the Clerk.

ARBA S. VAN VALKENBURGH
Judge.

Entered June 18, 1926.

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170 (Bond on Appeal.)

Know All Men by These Presents:

That we, Henry C. Flower, Receiver of the Guardian Trust Company, as principal, and United States Fidelity & Guaranty Co., as surety, are held and firmly bound unto the Kansas City Southern Railway Company, in the full and just sum of $500.00, to be paid to the said Kansas City Southern

Railway Company, its successors or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, by these presents.

The condition of the above obligation is as follows: Whereas, lately at the April Term of the United States District Court for the Western Division of the Western District of Missouri, in a conroversy pending in said Court between said Henry C. Flower, Receiver of the Guardian Trust Company, and said Kansas City Southern Railway Company, a decree was rendered against the said Henry C. Flower, as Receiver, and the said Henry C. Flower, as Receiver, has obtained an appeal and filed a copy thereof in the office of the Clerk of said Court, to revise the decree in the aforesaid controversy, and a citation directed to the said Kansas City Southern Railway Company, citing and admonishing it to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, 60 days from and after the date of said citation; now, therefore, if the said Henry C. Flower, as Receiver, shall prosecute said appeal to effect and answer all damages and costs, if he fails
171 to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed with our seals and dated this 19th day of June, 1926.

HENRY C. FLOWER
As Receiver of Guardian Trust Company, Principal.

UNITED STATES FIDELITY & GUARANTY CO.,
By James G. Guinotte,
(Seal) Attorney-in-fact, Surety.

Approved this 29th day of June, 1926. Edwin R. Durham, Clerk.

Filed in the United States District Court June 29, 1926.

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172 (Order, August 16, 1926, extending time to file ranscript.)

For good cause shown, it is ordered that appellant shall have until on or before the 1st day of October, 1926, to file its transcript of the record in the above entitled cause.

WILBUR F. BOOTH,
Judge.

Dated this 13th day of August, 1926.

Filed in the United States District Court August 16, 1926.

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173 (Order, September 22, 1926, further extending time to file Transcript.)

For good cause shown, it is ordered that appellant shall have until on or before the 1st day of December, 1926, to file its transcript of the record in the above entitled cause.

ARBA S. VAN VALKENBURGH
Judge.

Dated this 20th day of September, 1926.

Filed in the United States District Court September 22, 1926.

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174 (Order, November 24, 1926, further extending time to file Transcript.)

For good cause shown, it is ordered that appellant shall have until on or before the 2nd day of January, 1927, to file its transcript of the record in the above entitled cause.

ARBA S. VAN VALKENBURGH
Judge.

Dated this 24th day of November, 1926.

Filed in the United States District Court November 24, 1926.

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175 (Order, December 31, 1926, further extending time to file Transcript.)

For good cause shown, it is ordered that appellant shall have until on or before the 7th day of February, 1927, to file its transcript of the record in the above entitled cause.

ARBA S. VAN VALKENBURGH
Judge.

Dated this 31st day of December, 1926.

Filed in the United States District Court December 31, 1926.

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176 (Notice of presentation of condensed statement of Evidence for approval.)

To the Kansas City Southern Railway Company, Appellee, and its Solicitors:

You are hereby notified that the appellant has on Friday, December 31, 1926, lodged in the office of the Clerk of the above entitled court, a condensed statement of the evidence taken before Hon. Henry D. Ashley, Special Master in the above entitled cause, and that on Saturday, the 15th day of January, 1927, in the United States District Court Room, at Kansas City, Missouri, appellant will ask the Court to approve said statement. Carbon copy of said con-
177 densed statement is handed you herewith for your information.

JUSTIN D. BOWERSOCK
Solicitor for Appellant.

Received copy of the above notice and condensed statement, this 3rd day of January, 1927.

F. H. MOORE,
CYRUS CRANE,
A. F. SMITH
Solicitors for Appellee.

Filed in the United States District Court January 3, 1927.

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178 (Praecipe of Guardian Trust Company for Transcript).

To the Clerk of said Court:

For use in the appeal of the Guardian Trust Company, Henry C. Flower, Receiver, from the order and decree of this Court, entered June 18, 1926, in the above entitled causes, you will please prepare the transcript for the Appellate Court, and include therein the following parts of the record:

179 1. Stipulation between appellant and appellee, filed herein January 3, 1927.

2. All matters set out in the printed record, filed in the Supreme Court of the United States, in cause No. 24092, Kansas City Southern Railway Company, Appellant, vs. Guardian Trust Company, et al., Appellees, such matters to be included only by reference to said printed record in accordance with the stipulation hereinbefore called for.

3. Motion for order on Master as to inspection of books and papers, and further hearings of testimony and petition for order and decree of court as to further accounting and principles and extent of same, filed June 7, 1905.

4. Motion of Henry C. Flower, Receiver, for final decree, filed October 4, 1922.

5. Order appointing Henry D. Ashley, Special Master, filed June 25, 1923.

6. Memorandum opinion of Hon. A. S. Van Valkenburgh, Judge, filed June 20, 1923.

7. Exceptions of Kansas City Southern Railway Company to order appointing Special Master, filed September 22, 1923.

8. Motion of Kansas City Southern Railway Company to set aside order appointing Special Master, filed September 22, 1923.

9. Motion of Kansas City Southern Railway Company to require Guardian Trust Company to file petition, etc., filed September 22, 1923.

10. Order overruling motions, filed November 2, 1923.

11. Report of Henry D. Ashley, Special Master, filed September 15, 1924, except the testimony transmitted by the Special Master.

12. Condensed statement of testimony before Special Master, lodged December 31, 1926, as finally approved by the Court.

13. Exceptions of Guardian Trust Company to report of Special Master, filed September 27, 1924.

14. Exceptions of Kansas City Southern Railway Company to report of Special Master, filed October 4, 1924.

15. Final decree entered May 15, 1926.

16. Memorandum opinion of Hon. A. S. Valkenburgh, Judge, filed March 22, 1926.

17. Petition of Guardian Trust Company for appeal, filed June 18, 1926.

18. Order allowing appeal, entered June 18, 1926.

180 19. Assignment of errors of Guardian Trust Company, filed June 18, 1926.

20. Bond on appeal, filed June 29, 1926.

21. Citation in connection with said appeal and acknowledgment of service thereon.

22. Orders extending time to file transcript of the record entered August 16, 1926, September 20, 1926, November 24, 1926 and December 31, 1926.

23. Praecipe of Guardian Trust Company for record on appeal, filed January 3, 1927.

Respectfully submitted,

JUSTIN D. BOWERSOCK,
Solicitor for Appellant.

Service of above praecipe acknowledged this 3rd day of January, 1927.

F. H. MOORE,
CYRUS CRANE,
A. F. SMITH
Solicitors for Appellee.

Filed in United States District Court January 3, 1927.

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181 (Stipulation as to matters to be included in transcript, etc.)

It is hereby stipulated by and between Henry C. Flower, receiver of the Guardian Trust Company, appellant, and The Kansas City Southern Railway Company, appellee, as follows:

1. In preparing the record on appeal in the above entitled cause, the clerk of the district court shall not copy into said record any pleadings, exhibits, documents, reports, or any other matter which appears in the printed record filed in the United States Supreme Court in the former appeal in this cause, being case bearing file number 24092 in said Supreme Court, (the said case being No. 387, October Term, 1914, and No. 85, October Term, 1915, in said Supreme Court), but shall incorporate the same by reference to said printed record only. In preparing the printed record on this appeal the clerk of the Court of Appeals shall incorporate said pleadings, documents, reports, and other matter contained in said printed record in the same manner, only, that is to say, by reference to the printed record in said former appeal, and such pleadings, exhibits, documents, reports, and other matter contained in said printed record may be considered by the court and counsel in the same manner and with the same force and effect for all purposes as if copied in full into said record on this appeal.

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2. This stipulation is made expressly subject to approval by said Circuit Court of Appeals and shall not be binding

upon the parties hereto until so approved. The appellant shall provide at least three copies of said printed record on said former appeal in said Supreme Court for use of the court upon this appeal.

3. It is expressly understood that this stipulation applies only to the pleadings, exhibits, documents, reports, and other matters contained in said printed record, and shall not prevent either of the parties from including in the record to be considered by the Court of Appeals on this appeal such other pleadings, exhibits, documents, reports, or evidence as were offered in evidence or were properly before the court or the master in this cause on the issues appealed from subsequent to the filing of the mandate of the Supreme Court of the United States in the district court in this cause on or about April 18, 1916.

183 4. The opinions of any appellate courts introduced in evidence before the court or master in this cause, which opinions have been published in the recognized law reports of such courts, may be incorporated in said record by reference to the appropriate book and page of such reports without being copied in said record.

JUSTIN D. BOWERSOCK
Attorney for Appellant.

FRANK H. MOORE
A. F. SMITH
CYRUS CRANE
Attorneys for Appellee.

Filed in the United States District Court January 3, 1927.

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184 All matters set out in the printed record, filed in the Supreme Court of the United States, in cause No. 24092, Kansas City Southern Railway Company, Appellant, vs. Guardian Trust Company, et al., Appellees, such matters are included by reference to said printed record in accordance with the stipulation hereinbefore called for.

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185 (Order, February 4, 1927, further extending time to file transcript.)

For good cause shown, it is ordered that appellant shall have until on or before the 1st day of March, 1927, to file its transcript of the record in the above entitled cause.

ARBA S. VAN VALKENBURGH
Judge.

Dated this 3rd day of February, 1927.

Filed in the United States District Court, February 4, 1927.

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186 (Praecipe of Kansas City Southern Railway Company for additional matters to be included in Transcript.)

To The Clerk of Said District Court:

For use in the appeal of the Guardian Trust Company, Henry C. Flower, Receiver, from the order and decree of this Court entered June 18, 1926, in the above entitled
187 causes, you will please insert in the transcript for the appellate Court, the following parts of the record:

1. Motion by The Kansas City Southern Railway Company and Cambria Steel Company for leave to file herein "petition of The Kansas City Southern Railway Company for leave to introduce testimony proving that this litigation was instituted and conducted on the part of the complainants in entire good faith, and that therefore no costs as between solicitor and client should be taxed against them, or any of them;" filed December 8, 1923, with said petition for leave to introduce testimony accompanying said motion; and the order of this Court denying said motion.

2. The appellee objects to the inclusion of the "motion for order on Master as to inspection of books and papers, and further hearings of testimony, and petition for order and decree of Court as to further accounting and principles, and extent of the same," filed June 7, 1905, called for in the third paragraph of appellant's praecipe, for the reason that the same has no bearing on the issues tried before the Master, or before the District Court, because the same was not offered in evidence before the Master nor before the District Court on the exceptions to the report of the Master, and because no hearing has been had before the Master or the District Court on any issues upon which such motion could have any bearing. If this objection is overruled and said motion is inserted in the record, then include the ruling of the District Court on said motion as the same appears on pages 28269, 28270, 28271, and the first eleven lines of page 28272, Volume 47 of the transcript of the testimony adduced before Honorable Shannon C. Douglass, Special Master. If appellee's objection is overruled and said motion is inserted in the record, then also include the following:

"Saturday, February 4, 1905, ten o'clock a. m. (p. 8416 Douglass Transcript .....)"

188 then insert lines 4 to 25 inclusive on page 8633, Volume 16 of the transcript of the testimony adduced before Honorable Shannon C. Douglass, Special Master.

Respectfully submitted,

F. H. MOORE
CYRUS CRANE
A. F. SMITH
Solicitors for Appellee.

Service of above praecipe acknowledged this .... day of February, 1927.

Solicitors for Appellant.

Filed in the United States District Court February 5, 1927.

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189 Condensed Statement of Testimony before the Master prepared pursuant to Equity Rule No. 75-B.

In the District Court of the United States for the Western Division of the Western District of Missouri.

Cambria Steel Company, Complainant,
vs. In Equity
Kansas City Suburban Belt Railroad Company, The Union Terminal Railroad Company, Kansas City Independence Air Line, Guardian Trust Company, Missouri Elevator & Terminal Company, Central Improvement Company, Second Street Improvement Company, Fairmount Amusement Company, and Northern Townsite Company, Defendants.

Bill

Edward F. Swinney, as Receiver of The Kansas City Suburban Belt Railroad Company, and Kansas City Suburban Belt Railroad Company, Complainants,
No. 2468 vs.
Cambria Steel Company, Guardian Trust Company, Missouri Elevator & Terminal Company, Central Improvement Company and T. T. Crittenden, its Receiver, Northern Townsite Company, and Fairmount Amusement Company, Defendants.

Ancillary Bill.

The Kansas City Southern Railway Company, Complainant,

vs.

Guardian Trust Company, Kansas City Suburban Belt Railroad Company and Edward F. Swinney, as Receiver of The Kansas City Suburban Belt Railroad Company, Central Improvement Company and T. T. Crittenden, its receiver, Cambria Steel Company, Northern Townsite Company and its receiver, Fairmount Amusement Company, and Missouri Elevator & Terminal Company, Defendants.

Intervening Petition

190 The claim of Henry C. Flower, Receiver of the Guardian Trust Company for reimbursement for costs and expenses paid and incurred in resisting the various claims, charges and demands made against said company in the Cambria Steel Company-Guardian Trust Company-Kansas City Southern Railway Company litigation, having been by the court referred to the Hon. Henry D. Ashley, as a Special Master, for the taking of testimony on said claim, the same came on for hearing before said Special Master on January 31, 1924, at the office of said Master, at 502 Rialto Building, Kansas City, Missouri. The Guardian Trust Company and its Receiver appeared by Jules C. Rosenberger, and Justin D. Bowersock, their counsel. The Kansas City Southern Railway Company appeared by Cyrus Crane, Frank H. Moore and A. F. Smith, its counsel; and the Cambria Steel Company appeared by R. E. Ball, its counsel.

Thereupon, the following proceedings were had:

The Master, at the outset, over-ruled the motion of The Kansas City Southern Railway Company, filed December 1, 1923, to require the Guardian Trust Company and its Receiver to restate their present account and to eliminate therefrom all items, or parts of items, not properly taxable as costs, to which ruling the defendants, The Kansas City Southern Railway Company, and the Cambria Steel Company, by their counsel, at the time duly [accepted].

Thereupon the Guardian Trust Company and its Receiver, to sustain the issues on their part, offered as a witness, Mr. H. B. Leavens, who, being duly sworn and examined, testified in substance as follows:

191 My name is H. B. LEAVENS. I am assistant to Henry C. Flower, Receiver of the Guardian Trust Company,

and have an office at 301 Fidelity Trust Building, Kansas City, Missouri. As assistant to the Receiver, I examined the account or claim, dated October 15, 1923, now on file with the Master, before it was filed and checked it through with the vouchers we have here. The books of account, vouchers and records of the Guardian Trust Company and its successive Receivers, are lodged in a room in the Board of Trade Building to which I have access at all times. I have custody of them for Mr. Flowers, the Receiver, to the extent that nobody else goes near them or sees them or has anything to do with them but me. I got out of the files of the Guardian Trust Company and its Receiver, all of the vouchers which are recited and referred to by number on the account under the caption "Group 1, Costs as between party and party" and checked the whole list through. I have these vouchers here. They are the original vouchers.

Thereupon, Mr. Rosenberger offered in evidence, all of the vouchers enumerated in the account with the heading "Group 1, Costs between party and party".

Mr. Smith: I understand that there are included in Group 1, a large number of items and parts of items which are not properly taxable as costs as between party and party, and it may be that there will be a claim that they are entitled to tax those as between solicitor and client and, therefore, I want to make a formal objection to all of those items. I will read it in evidence with the understanding that if any question arises outside of those objections and we de-
192 sire to make additional objections to, we will do so, and also with the understanding that it is the purpose of these objections to preserve our objections to any items as costs that may not be properly taxed as costs as between party and party. I want to say in addition, that it is impossible in the offer of these vouchers for us to determine just what vouchers are being offered and, therefore, it is not possible for us to make our objections to the items and to the evidence in support of those items as they are being offered inasmuch as they are being offered in bulk.

The following objections of The Kansas City Southern Railway Company, the Cambria Steel Company joining therein, were thereupon read into the record by Mr. Smith, as follows:

"The Kansas City Southern Railway Company, herein sometimes called the Southern Company, preserving and renewing all of its objections and exceptions to the memoran-

dum opinion of Judge Van Valkenburgh of June 20, 1923, and to the order of the District Court of June 25, 1923, herein, referring this matter to the Master, and preserving all of its exceptions to the overruling of the 'Motion of the Kansas City Southern Railway Company to require the Guardian Trust Company to file a petition, and praying the Court to hear evidence on the issues presented' filed herein on to-wit: September 22, 1923, and overruled on to-wit, November 2, 1923, and to the denying of the motion to file verified 'Petition of The Kansas City Southern Railway Company for leave to introduce testimony proving that this litigation was instituted and conducted on the part of each of the complainants in entire good faith, and that therefore no costs as between solicitor and client should be taxed against them or any of them', filed and overruled on to-wit, December 8, 1923, and preserving its exceptions to the overruling by the Master of its 'motion to require the Guardian Trust
193 Company and its Receiver to restate their present account and to eliminate therefrom all items or parts of items not properly taxable as costs,' filed with the Master on to-wit, December 1, 1923, says:

1. Said Southern Company (the Cambria Steel Company joining in all of these objections) objects to the introduction of any and all evidence as to any item in the account which said Guardian Trust Company and its Receiver, herein sometimes called the Trust Company, are seeking to have taxed as costs as between solicitor and client, for all of the reasons stated in said petitions and motions, all of which are hereby adopted as a part of these objections, and for the following reasons:

2. Under the decree and opinion of the Court of Appeals in this case, and under the law, and under the principles, rules and practice in equity, costs as between solicitor and client may not be taxed in this case.

3. There has been no pleading or motion filed in these proceedings setting forth any grounds upon which costs as between solicitor and client are claimed. There has been no evidence offered showing any facts justifying the allowance of any such costs. The Kansas City Southern Railway Company has not been permitted to offer evidence which would show that the facts do not authorize the allowance of any such costs. The allowance of any costs as between solicitor and client would, therefore, constitute the taking of

the property of said Railway Company without due process of law in violation of Article 5 of the amendments to the Constitution of the United States.

4. If it is claimed by the Trust Company that it is entitled to have taxed as costs as between solicitor and client any of said items on the ground that charges of misconduct were made against said Trust Company, and that such
194 charges were made in bad faith and without any foundation or reasonable ground, and if it is claimed that said Trust Company is entitled to have such items taxed because it was defending a fund in its possession as trustee or pledgee, then such contention is without merit for the following reasons:

(1) Under the rules, principles and practice in equity extraordinary costs are not taxable because of the allegations, or any of them, contained in the original or ancillary bills, or the intervening petition, or any of them.

(2) The Trust Company was sued herein in its individual capacity, and not as the trustee of an express trust.

(3) In the prosecution of its claim, and in its defense against the claims of other parties, the Trust Company had an entirely personal interest in the litigation, and it was acting in the interests of no beneficiary or other party than itself.

(4) There was not involved in this litigation any trust fund which was being administered by the Trust Company, nor any other fund, out of which or on account of which, any allowance could be made under the principles, rules and practice in equity.

(5) The real issues involved in this case were whether the Kansas City Suburban Belt Railroad Company, sometimes herein, for convenience, referred to as the Belt Company, was indebted to the Guardian Trust Company, or whether said Trust Company was indebted to the Belt Company; and whether the Southern Company was liable for the debts of the Belt Company. In a litigation of that kind none of the items mentioned in division I hereof is taxable as costs.

(6) As the result of said accounting several substantial credits were allowed to the Belt Company on the Trust Company's claim against it; and the Master and the Circuit Court

found that the Trust Company's claim to a lien on
195 certain property claimed by the Southern Company was not sustained, though such lien was thereafter established on appeal.

5. By reason of the statutes of limitations and because of the laches of the Trust Company and its Receiver, any claim of said Trust Company or of said Receiver to any of said items, or any part thereof, is barred.

6. The Kansas City Southern Railway Company objects to any and all evidence in support of each and every item sought to be proved by voucher, or by any judgment or order of court in any case to which it was not a party, or by the testimony of witnesses not having personal knowledge of the facts upon which such charges were made, on the additional grounds that there has been no competent proof of the merits of the subject matter of the item, or what services were rendered or materials furnished, or as to proof of its payment, or that such amount, or how much of such amount, if any, was expended on account of this litigation or on account of any issue therein as to which such costs are taxable, if they are taxable on any issue; and we pray the right to have an examination as to the facts in reference to such items and the right to examine and cross-examine the witnesses thereto and to offer counter evidence thereon; and we object to the voucher, judgment or order, and to the testimony of any witness in support of the same as being hearsay evidence and not binding upon us.

7. The Kansas City Southern Railway Company objects to any and all evidence in support of any item or any part of any item for fees or services or expenses charged or earned or incurred subsequent to December 1, 1901, for the following additional reasons:

(1) On November 20, 1901, the receivers of the Belt Company filed their ancillary bill of complaint herein, which included all of the charges against the Trust Company
196 contained in the original bill in these proceedings. Said Receivers were officers of this court, and acting under its authority, and such fact constitutes a conclusive bar to any claim that such charges were not made in good faith and on reasonable grounds.

(2) In November, 1901, there was filed herein a stipulation signed by all of the parties, including the Trust Company and its Receiver, providing for an accounting between

the Belt Company and the Trust Company, and the determination of the state of indebtedness of the one to the other, and providing that a judgment should be entered against the one which should be found to be indebted to the other. No testimony was taken herein until after January 1, 1903. All parties in interest construed said stipulation as a mutual consent that such an accounting should be had as did this court, when in March, 1908, this stipulation was under consideration, this court saying thereof:

'The Guardian Trust Company by its stipulation, its appearance and answer in said cause, has consented to the submission to said Master the hearing and finding on all the matters involved in controversy between it and the parties to said litigation. It has consented that the Master take an accounting, finding and report as to the respective rights and claims of the parties to the property, notes, bonds and claims involved.'

8. The Kansas City Southern Railway further objects to any and all evidence in support of any item or any part thereof so far as it covers payment for fees or services or expenses charged or earned or incurred subsequent to June 25, 1910, for the following additional reasons:

(1) On May 21, 1910, the Master before whom said accounting was had filed in the District Court his report wherein he found in favor of the Trust Company, denying the claim of the Belt Company and its Receivers against the Trust Company, and allowing the claim of the Trust Company against the Belt Company (with certain deductions); the Master also found that the Southern
197 Company was not liable to the Trust Company for the debts of the Belt Company to the Trust Company; the Master also found that the Trust Company did not have a lien on certain lands whose title was in the Central Improvement Company but which had been paid for and which were being used by the Belt Company for railroad purposes, but that said property belonged to the Southern Company. This report of the Master was approved by this court, as shown by the final decree of June 25, 1910, and an appeal was prosecuted by the Trust Company from that decree. If costs as between solicitor and client were taxable on account of any charges of improper conduct made against the Trust Company by any party in these proceedings, the litigation with reference to those issues was finally terminated with that final decree. The only questions then remain-

ing were whether the Master and the Circuit Court were right or wrong in their findings that the Southern Company was not responsible for the debts of the Belt Company, and that the Trust Company did not have a lien superior to the claim of the Southern Company to the real estate described in paragraph VI of the final decree of June 25, 1910. The questions involved on the appeals from said final judgment had to do with questions of law entirely independent of any charge that was made against the Trust Company by any party in these proceedings.

(2) The appeal from the decree of June 25, 1910, was taken by the Trust Company. All of the issues involved on that appeal had been found by the Master and the Circuit Court in favor of the Southern Company. The Chief Justice of the United States and an associate justice concurred in the conclusion of the Master and of the District Court. There is, therefore, no room for contending that the contentions of the Southern Company on the questions at issue on such appeal were not made in good faith and on reasonable grounds.

198 9. The Kansas City Southern Railway Company further objects to any and all evidence in support of each and every item for attorneys' fees for the following additional reasons:

(1) The statutes of the United States fix the amount of attorneys' fees that may be taxed as costs, and the District Court and the Master are without jurisdiction to tax any other or additional fees.

(2) The Court of Appeals and the Supreme Court have, in the judgments and mandates of said courts in these proceedings, fixed the amounts of attorneys' fees to be taxed in said courts, and the District Court and the Master are without jurisdiction to change or determine the amount of such fees.

(3) If the claim for costs as between solicitor and client is based on the theory that these proceedings were instituted in bad faith and without reasonable grounds, then there was no need for so many or such expensive lawyers in this litigation, and the services rendered were in large part unnecessary, and the charges made were excessive.

(4) The Southern Company further says that each of said items as contained in the present account is excessive, and

that it is a charge for services not entirely devoted to these proceedings, and not entirely devoted to the issues on account of which claim is made for extraordinary costs.

10. The Kansas City Southern Railway Company objects to any and all evidence in support of each item, or part of an item, purporting to be established by a judgment or order of court, and objects to the judgment or order offered in evidence, for the following additional reasons in addition to those stated in objection 6 hereof.

(1) The Kansas City Southern Railway Company
199 was not a party to such suits, or any of them, in which such judgments were rendered or orders made, and said judgments or orders are not binding against it or competent evidence against it.

(2) The amount stated in such judgment or order is excessive.

The Southern Company reserves the right to make such other and additional objections as may be necessary and proper."

The foregoing is only a portion of the written statement of objections read into the evidence by Mr. Smith. The statement also contained specific objections to the introduction of any testimony on certain numbered items of the Receiver's claim; and it was agreed between the parties that in making up the transcript the objections made should follow each question in its proper arrangement until each item has been objected to, as to all of the objections appearing to that item on all of the grounds applicable to that item, and that as to the other items in such group, it may be considered that the same objection is made to each of those items.

The Master: The Master has the impression—he may not be correct about it—that items 1, 2 and 3 are admitted.

Mr. Smith: There is no denial as to items 1, 2 and 3; that is admitted. As to all of the other items in Group 1 of this account, we object to them for the reasons stated in our written objection and deny further that they are properly taxable as costs as between party and party. There is included in our objections, the general objection that this is hearsay evidence, all of these vouchers are purely hearsay evidence, and we object to them on that ground.

The Master: The Master overrules the objections to the introduction of these vouchers.

To which action and ruling of the Master, the Kansas
200 City Southern Railway Company and the Cambria Steel Company duly excepted.

Thereupon the vouchers enumerated in the account under the heading "Group 1, Costs as between party and party" were received in evidence by the Master.

The vouchers covering Items 4 to 32, inclusive, are receipted statements for stenographer's fees paid from time to time to H. A. Jetmore, shorthand reporter, by Guardian Trust Company, for the taking and transcribing of testimony heard before the Honorable Shannon C. Douglas, Special Master in the case of Cambria Steel Company vs. Kansas City Suburban Belt Railway Company, in the Circuit Court of the United States for the Western Division of the Western District of Missouri.

Said vouchers are in substance, as follows:

Voucher No. 317, covering Item No. 4, is a receipted statement to the Guardian Trust Company, dated July 14, 1903, from H. A. Jetmore, for one-third of the stenographer's bill for taking testimony on a hearing before said Special Master, and is in the sum of $487.73.

Voucher No. 448, covering Item No. 5, is a similar receipted statement, dated December 1, 1903, from H. A. Jetmore, covering one-third of the cost of the transcript of testimony in another hearing before said Special Master and is in the sum of $168.90.

Voucher No. 510, covering Item No. 6, dated Feb. 16, 1904, in the sum of $77.16, is a receipted statement for carbon copy of transcript of testimony taken in a further hearing before said Special Master, in the same proceeding.

Voucher No. 621, covering Item No. 7, is a receipted statement, dated June 30, 1904, in the sum of $296.87, from
201 Mr. Jetmore to the Guardian Trust Company, covering one-third of the cost of transcript of testimony on a hearing before said Special Master, and being for a carbon copy of said transcript.

Voucher No. 650, covering Item No. 8, is a receipted statement, dated August 1, 1904, rendered by Mr. Jetmore to the Guardian Trust Company for a carbon copy of a transcript of the testimony taken before said Special Master in the same proceeding, in the sum of $36.17, being one-third of the cost of said transcript.

Voucher No. 719, covering Item No. 9, is dated Oct. 27, 1904, and is in the sum of $43.16, and is for a carbon copy of the transcript of testimony on a hearing before said Special Master, and represents one-third of the cost of said transcript.

Voucher No. 831, covering Item No. 10, is in the sum of $96.00, and is dated March 1, 1905, and is for one-third of the cost of a transcript of the testimony on a further hearing before said Special Master, and covers a carbon copy of said transcript.

Voucher No. 845, covering Item No. 11, dated March 30, 1905, in the sum of $209.17, is for one-third of the costs of a transcript of testimony taken on a hearing before said Special Master.

Voucher No. 867, covering Item No. 12, in the sum of $132.50, dated April 20, 1905, is for a carbon copy of a transcript of testimony on a hearing before haid Special Master. and represents one-third of the cost of said transcript.

Voucher No. 890, covering Item No. 13, is dated May 15, 1905, and is in the sum of $123.92. It is for a carbon copy of a transcript of the testimony on a hearing before said Special Master.

Voucher No. 914, covering Item No. 14, dated July 1, 1905, is in the sum of $515.50, and is for a carbon copy of a transcript of testimony on a hearing before said Special Master.

202 To each of Vouchers 317, 448, 650, 719, 831 and 867, was attached a bill rendered by Mr. Jetmore in which it was stated that said bill was for a carbon copy of the testimony in this cause. (pp. 46-57.)

Voucher No. 890, covering Item No. 13, is dated May 15, 1905, and is in the sum of $123.92. It is for a carbon copy of a transcript of the testimony on a hearing before said Special Master.

Voucher No. 914, covering Item No. 14, dated July 1, 1905, is in the sum of $515.50, and is for a carbon copy of a transcript of testimony on a hearing before said Special Master.

203 Voucher No. 923, covering Item No. 15, dated July 11, 1905, is in the sum of $137.75, and is for a carbon copy of a transcript of testimony on a hearing before said Special Master.

Voucher No. 940, covering Item No. 16, dated August 14, 1905, is in the sum of $172.08, and covers one carbon copy of

a transcript of testimony on a hearing before said Special Master.

Voucher No. 944, covering Item No. 17, is dated August 25, 1905, and is in the sum of $352.25. It is for the preparation of copies of exhibits introduced in evidence before said Special Master to be inserted in the records of said proceedings.

Voucher No. 953, covering Item No. 18, is dated September 12, 1905, and is in the sum of $54.00. It is for a carbon copy of a transcript of testimony on a hearing before the Special Master.

Voucher No. 968, covering Item No. 19, is dated Oct. 3, 1905, and is in the sum of $594.33. It represents the cost of a transcript of testimony taken on a hearing before said Special Master.

Voucher No. 1,000, covering Item No. 20, is dated Nov. 13, 1905, and is in the sum of $368.58. It represents the cost of a transcript of testimony on a hearing before said Special Master.

Voucher No. 1023, covering Item No. 21, is dated Dec. 18, 1905, and is in the sum of $346.88. It represents the cost of a transcript of testimony on a hearing before said Special Master.

Voucher No. 1031, covering Item No. 22, is dated Jan. 4, 1905, and is in the sum of $212.58. It represents the
204 cost of a transcript of testimony taken on a hearing before said Special Master.

Voucher No. 1035, covering Item No. 23, is dated Jan. 20, 1906, and is in the sum of $342.00. It represents the cost of a transcript of testimony taken on a hearing before said Special Master.

Voucher No. 1040, covering Item No. 24, is dated Feb. 12, 1906, and is in the sum of $193.05. It is for a carbon copy of a transcript of testimony taken on a hearing before said Special Master.

Voucher No. 1048, covering Item No. 25, is in the sum of $159.58, and is dated Feb. 20, 1906. It is for a carbon copy of a transcript of testimony taken in a hearing before said Special Master.

Voucher No. 1075, covering Item No. 26, in the sum of $180.50, is dated March 23, 1906, and represents the costs of

a transcript of testimony taken on a hearing before said Special Master.

Voucher No. 1079, covering Item No. 27, in the sum of $315.58, is dated March 9, 1905, and represents the cost of a transcript of testimony taken on a hearing before said Special Master.

Voucher No. 1080, covering Item No. 28, is dated March 29, 1906, and is in the sum of $208.60. It represents the cost of a transcript of testimony taken on a hearing before said Special Master.

Voucher No. 1097, covering Item No. 29, is dated April 25, 1906, and is in the sum of $614.78. It represents the cost of a transcript of testimony taken on a hearing before said Special Master.

Voucher No. 1171, covering Item No. 30, is dated Sept.
205 5, 1906, and is in the sum of $214.25. It represents the cost of a transcript of testimony taken on a hearing before said Special Master.

Voucher No. 2032, covering Item No. 31, is a receipted statement from John A. Prescott, rendered to the Guardian Trust Company, on April 1, 1907, covering a number of items paid by him for the company, including a bill of $15.83 from Mr. Jetmore, dated Feb. 28, 1907, representing the cost of a transcript of testimony taken on a hearing before said Special Master.

Voucher No. 2236, covering Item No. 32, is dated Sept. 28, 1907, and is in the sum of $5.00. It represents the cost of transcribing certain testimony taken on a hearing before said Special Master.

The Kansas City Southern Railway Company and Cambria Steel Company urged against the competency of the foregoing vouchers covering Items 4 to 32, inclusive, the objections set forth in numbered paragraphs 1 to 7, inclusive, of their written statement of objections. Said parties admitted so much of Items 4 to 32, inclusive, as include the cost of the original evidence furnished to the Master, and that the same is properly taxable as costs as between party and party; but said parties objected to all other items and parts of items which the Receiver is seeking to have taxed as costs as between party and party for the reason that said items are not properly taxable as such.

Mr. Smith: I want to say, with reference to Items 4 to 32, inclusive, covering the amounts paid to Mr. H. A. Jetmore,

that those items cover the amount paid him for the original cost of the transcript furnished by him to Judge Douglas, as Master, and that a very large part of those items, in fact, the majority of them, are for carbon copies of the testimony furnished to the Trust Company. As to so much of these items as constitute payment for the original transcript, we think that those ought to be taxed as costs as between party and party, and we deny the right to tax the balance of them.

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The foregoing objections were, by the Special Master, overruled, to which ruling, The Kansas City Southern Railway Company and the Cambria Steel Company duly excepted.

The remaining vouchers so offered and received in evidence by the Master were, in substance, as follows:

Voucher No. 477, covering Item No. 34, is a receipted statement, dated January 2, 1904, from Adelaide Utter, Clerk of the United States Circuit Court, Kansas City, Missouri, to the Guardian Trust Company, for a certified copy of intervening petition of S. R. Knott and E. F. Swinney in the case of Trust Company vs. Kansas City Suburban Belt Railroad Company, and is in the sum of $1.15.

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction of said voucher in evidence on the grounds set forth in numbered paragraphs 1 to 7, inclusive, of their written statement of objections. The Special Master overruled the objection, to which ruling said parties duly excepted.

Voucher No. 959, covering Item No. 41, is a receipted statement, dated Sept. 23, 1905, from Adelaide Utter, Clerk of the United States Circuit Court, to the Guardian Trust Company, for a transcript of the record in the Kansas City Suburban Belt cases, No. 24645-6-7, and is in the sum of $389.70.

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The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction of this voucher in evidence on the grounds set forth in numbered paragraphs 1 to 7, inclusive, of their written statement of objections. Said parties also objected to any and all evidence in support of Item No. 41, the costs of appeals from injunction orders prior to the final decree for the following reasons:

(1) So much of such items as were properly taxable as costs have been duly fixed by the judgment of the Court of Appeals and they have been paid to the Southern Company.

(2) Judgment was rendered by the Circuit Court in favor of the Southern Company in said injunction suits and, therefore, there is no ground for contending that they were instituted or prosecuted in bad faith and without reasonable grounds.

(3) The suits in the said Court and the appeal from the orders of injunction enjoining their prosecution were improvidently instituted and prosecuted, the position taken by the Trust Company in reference to said suits and appeals being directly contrary to the position eventually taken by it on the appeals from the final decree of June 25, 1910, in the Court of Appeals and in the United States Supreme Court.

Mr. Smith: Item No. 41 is for costs that are taxed for making up a record and for printing the record in the appeal from the first injunction case. Those costs have been taxed in that case and have been paid by the Southern Company, with an attorney's fee added thereto, taxed by the Court of Appeals and hence cannot be taxed in this case.

The foregoing objections to the introduction of said voucher were overruled by the Master, to which ruling the Kansas City Southern Railway Company and the Cambria Steel Company duly excepted.

208 Voucher No. 1998, covering Item No. 57, is a receipted statement, dated January 5, 1907, from B. W. Lightburn, for stenographic services for reporting and transcribing the arguments of J. C. Rosenberger and H. S. McCartney, made before Hon. Shannon C. Douglas, Special Master in the case of Cambria Steel Company vs. Guardian Trust Company, and is in the sum of $170.80.

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction of the foregoing voucher on the grounds set forth in numbered paragraphs 1 to 7, inclusive, of their written statement of objections. The objection was by the Master overruled, to which ruling, said parties duly excepted.

Voucher No. 2311, covering Item No. 68, is a receipted statement, dated March 31, 1908, from John D. Jordan, Clerk of the United States Circuit Court of Appeals for the 8th Circuit to the Guardian Trust Company for clerk's fees and the cost of printing the record on appeal in the case of Guardian Trust Company vs. Kansas City Southern Railway Company, and is in the sum of $1,070.00.

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction of said voucher in evidence on the grounds set forth in numbered paragraphs 1 to 7, inclusive, of their written statement of objections, and on the grounds theretofore urged against the introduction of Voucher No. 959 covering Item No. 41, i. e., that so much of said item as was properly taxable as costs was fixed by the judgment of the Court of Appeals, and paid by the Southern Company; that the judgment was rendered by the Circuit Court in favor of the Southern Company, and hence there is no ground for contending that suit was instituted or prosecuted in bad faith, and without reasonable grounds; and that the suits in the State Court and the appeal from orders of injunction enjoining the prosecution were improvidently instituted, and prosecuted, the position taken in reference to said suits and appeals being di-
209 rectly contrary to the position eventually taken by it on the appeals from the final decree of June 25, 1910, in the Court of Appeals and the United States Supreme Court.

The foregoing objections to the introduction of said voucher were, by the Master, overruled, to which ruling said parties duly excepted.

Voucher No. 2319, covering Item No. 69, is a receipted statement, dated April 10, 1908, from Adelaide Utter, Clerk of the United States Circuit Court, to the Guardian Trust Company for a copy of opinions filed March 30, and April 6, 1908, in the case of Cambria Steel Company vs. Kansas City Suburban Belt Railway Company, and is in the sum of $4.20.

Voucher No. 2663, covering Item No. 70, is a receipted statement, dated June 29, 1910, from Adelaide Utter, Clerk of the United States Circuit Court to the Guardian Trust Company, for a certified copy of the decree in the case of Cambria Steel Company vs. Kansas City Suburban Belt Railway Company and is in the sum of $6.65.

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction of said vouchers, No. 2319 and 2663 on the grounds set forth in numbered paragraphs 1 to 7, inclusive, of their written statement of objections. This objection was, by the Master, overruled, to which ruling said parties duly excepted.

Voucher No. 2692, covering Item No. 71, is a receipted statement, dated Sept. 30, 1910, from Adelaide Utter, Clerk

of the United States Circuit Court, to the Guardian Trust Company, for a transcript of the record in the case of Cambria Steel Company vs. Kansas City Suburban Belt Railway Company, and is in the sum of $764.35.

210 Voucher No. 2698, covering Item No. 72, is a receipted statement, in the sum of $50.00, from Gates & English, to the Guardian Trust Company, dated Oct. 26, 1910, representing a payment made by that firm to John D. Jordan, Clerk of the United States Circuit Court of Appeals for the 8th Circuit, covering a $25.00 deposit for costs in the case of Central Improvement Company, appellant vs. Cambria Steel Company, and a $25.00 deposit for costs in the case of Guardian Trust Company, appellant, vs. Cambria Steel Company.

Voucher No. 2760, covering Item No. 73, is a receipted statement from John D. Jordan, Clerk of the United States Circuit Court of Appeals, to the Guardian Trust Company, dated Oct. 28, 1910, for the printing of the record in the case of Central Improvement Company vs. Cambria Steel Company, and the case of Guardian Trust Company vs. Cambria Steel Company, and is in the sum of $910.00.

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction of said vouchers, No. 2692 and 2698 and 2700, covering Items No. 71, 72 and 73, respectively, on the grounds set forth in numbered paragraphs 1 to 8, inclusive, of their written statement of objections, and on the further ground that so much of said items as were properly taxable as costs have been duly affixed and have been taxed as costs as between party and party, and the District Court has no authority to retax the same as costs, either as between party and party, or as between solicitor and client. The foregoing objections were by the Master overruled, to which ruling said parties duly excepted.

211 Voucher No. 2743, covering Item No. 74, is a receipted statement from Gates & English, to the Guardian Trust Company, dated Feb. 7, 1911, representing disbursements totaling $35.00 made by that firm, as follows: For two certified copies of final decree and order for appeal in the case of Cambria Steel Company vs. Kansas City Suburban Belt Railway Company, $15.30; recording lis pendens notice, $9.20; recording said final decree and order for appeal, $10.50; total $35.00.

Voucher No. 2762, covering Item No. 75, is a receipted statement from Adelaide Utter, Clerk of the United States

Circuit Court, to the Guardian Trust Company, dated May 9, 1911, for two certificates in the case of Cambria Steel Company vs. Kansas City Suburban Belt Railway Company, and is in the sum of $3.10.

Voucher No. 2998, covering Item No. 76, is a receipted statement from Gates & English, to the Guardian Trust Company, dated Nov. 18, 1912, representing, among other items, a payment made by that firm to John D. Jordan, Clerk of the United States Circuit Court of Appeals, in the sum of $5.00, for a certified copy of the opinion of said court.

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction in evidence of the foregoing vouchers, No. 2743, 2762 and 2998, covering Items No. 74, 75 and 76, respectively, on the grounds set forth in numbered paragraphs 1 to 8 inclusive, of their written statement of objections. The objection was, by the Master, overruled, to which ruling, said parties duly excepted.

Voucher No. 3057, covering Item No. 77, is a receipted statement from John D. Jordan, Clerk of the United States Circuit Court of Appeals for the 8th Circuit, in the sum of $40.00, to the Guardian Trust Company, dated May 2, 1913, representing an additional deposit for costs of $10.00, in the case of Central Improvement Company vs. Cambria Steel Company, and an additional deposit for costs of $30.00 in the case of Guardian Trust Company vs. Cambria
212 Steel Company.

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction of said voucher in evidence on the grounds set forth in numbered paragraphs 1 to 8, inclusive, of their written statement of objections, and on the further ground that so much of said Item No. 77 as was properly taxable as costs, has been duly fixed and taxed as costs between party and party and the District Court has no authority to retax the same as costs, either as between party and party or as between solicitor and client. These objections were, by the Master, overruled, to which ruling, said parties duly excepted.

Voucher No. 3128, covering Item No. 78, is a receipted statement from John D. Jordan, Clerk of the United States Circuit Court of Appeals to the Guardian Trust Company, dated Dec. 15, 1913, representing the costs of the copy of the opinion in the cases of Central Improvement Company vs. Cambria Steel Company and Guardian Trust Company vs. Cambria Steel Company, and is in the sum of $5.00.

Mr. Leavens: I have also brought with me the original vouchers which are referred to by voucher number in the account under the heading "Group 2, Costs and Expenses as between Solicitor and Client".

Mr. Rosenberger thereupon offered in evidence said last mentioned vouchers.

Mr. Smith: These vouchers are subject to the written objections we have made to Items in Group 1 in the account.

The Master: The objections to the vouchers under Group 2, as offered, are overruled.

To which ruling of the Master, the Kansas City Southern Railway Company and the Cambria Steel Company duly excepted.

213 The vouchers referred to were thereupon received in evidence by the Master and are in substance, as follows:

Voucher No. 146, covering Item No. 82, is a receipted statement from Trimble and Braley, to the Guardian Trust Company, dated Oct. 8, 1902, representing professional services as attorneys, and expenses incurred and expended in connection with the receivership of the Guardian Trust Company, in the aggregate sum of $7,125.00. The voucher recites that this amount was allowed said firm by Judge Thayer in his order of Oct. 4, 1902, discharging the Receiver of the Guardian Trust Company, and that said sum is paid and accepted in full compensation for professional services and expenses to Wash Adams, as Receiver, and to his predecessor in said Receivership, Francis M. Black, and to the Guardian Trust Company during the receivership except for services and expenses rendered to or in the case of W. W. Bierce vs. Guardian Trust Company, but does not include pay for any services or expenses prior to the receivership.

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction of said voucher in evidence on the grounds set forth in numbered paragraphs 1 to 7, inclusive, and 9 and 10 of their written statement of objections. Said parties further objected to the introduction of said voucher and to any and all evidence in support of Item No. 82, because it is apparent on the face of the charge, that the Guardian Trust Company and its Receiver are attempting to make their own apportionment of the amount of such expenses to be charged in this litigation. Said parties, in support of their objection to such evidence,

asked leave to offer evidence, documentary and oral, for the purpose of showing that the services covered by said Item, included services foreign to this litigation and upon issues on account of which costs as between solicitor and
214 client may not be taxed, if they may be taxed on any issue, and were excessive; and said parties thereupon read into the record, the following statement:

"The Guardian Trust Company filed its answer in this cause on November 5, 1900, and on the same day the Central Improvement Company filed its answer. On November 21st and 22nd, 1900, testimony was taken upon the application for a temporary injunction and the appointment of receivers. No testimony was taken in the accounting case until January, 1903. During the period of time covered by said items 81 to 107 and by item 127, the said J. McD. Trimble, and Trimble & Braley were devoting their time and attention to other business and litigation of the Trust Company as well as to the litigation and issues here under consideration. In support of this objection, we offer in evidence the following extracts from the findings of the referee in the Trimble & Braley case. (See pages 108 et seq. of said record):

1902.
Jan. 13 To cash for expenses on two trips to Jefferson City, Jan. 9 and 12, to argue Jones v. Hamm in Supreme Court.....$34.60
Feb. 18 To cash for expressage on briefs in Chicago Zinc Mining case.. .25
Mar. 4 To expenses C. A. Braley and Wash Adams to Sherman, Texas.. 45.00
Mar. 27 To cash for expenses of C. A. Braley to Joplin, Mo. Mar. 26 to 28, in Zinc case..... 17.55
Apr. 4 To cash for expenses verifying affidavits of service of notice of hearing at Sherman, Texas, of supplemental and intervening petitions in Port Arthur Channel & Dock suit, .25
Apr. 6 To cash for telegram Trimble to D. E. Bryant Mar. 13 .30
To cash for telegram Supreme Court Clerk to Trimble & Braley, Mar. 19 .25
Apr. 11 To cash for certified copy of order in Moore v. Jones 1.00
215
Apr. 18 To cash for telegram Apr. 8 Clerk of Court to Trimble in Port Arthur Channel & Dock case $ .60
To cash for telegram Trimble & Braley to Clerk in Port Arthur Channel & Dock case .35
Apr. 22 To cash for expenses C. A. Braley to Sherman, Texas 25.05
Apr. 29 To cash for telephone C. A. Braley to Scott in Chicago Zinc Mining case .90
Apr. 30 To cash for telegram from Judge Bryant to Trimble & Braley .30
May 4 To cash for telegram J. McD. Trimble to C. A. Braley at Sherman, Texas .95

May 4	To cash for telegram from Trimble & Braley to C. A. Braley at Sherman, Texas	.80
May 22	To half cost copy order Provident Life & Trust Co. v. Port Arthur Channel & Dock Co.	1.10
	To half C. A. Braley's expenses to Beaumont, May 13 to 20, account Port Arthur Channel & Dock Case	32.80
May 27	To cash for telegram Trimble & Braley to Bates in same case	2.06
June 30	To cash for telephone to Wilcox at Chicago in Chicago Zinc Mining case	1.40
	To cash for telegram June 30 to Braley about hearing Port Arthur Channel & Dock case at Sherman, Texas	.37
Sept. 14	To cash for telegram Trimble & Braley to Ivins, Kidder & Melcher, New York	1.01
Oct. 10	To cash for telegram Sept. 3 to Ivins, Kidder & Melcher	.98
Oct. 30	To cash for copy of order appointing receiver of O. K. C. & E. R. R. Co.	1.30"

Said objections to the introduction of said voucher were, by the Master, overruled, and said offer of proof in support of said objections, were by the Master at that time denied; to which rulings of the Master, said parties duly excepted.

216 Voucher No. 30, covering Item No. 83, is a receipted statement from J. McD. Trimble to the Guardian Trust Company, dated Oct. 31, 1902, representing salary of the General Counsel for the last nine days of October, 1902, at the rate of $500.00 per month, and is in the sum of $150.00.

216 Voucher No. 68, covering Item No. 84, is a receipted statement from J. McD. Trimble, to the Guardian Trust Comany, dated Nov. 29, 1902, representing salary as General Counsel for the month of November, 1902, in the sum of $500.00.

The vouchers covering Items No. 85 to 107, inclusive, are in substantially the same form as Vouchers No. 30 and 68, covering Items No. 83 and 84. The only difference between said vouchers No. 30 and 68 and vouchers covering Items No. 85 to 107, inclusive, being the difference in dates and amounts. Vouchers numbered 131, 154, 176, 205, 244, 273, 299, 325, 358, 374, and 401, covering respectively, Items numbered from 85 to 95, inclusive, are each in the sum of $500.00, and are dated respectively, as follows: December 31, 1902, January 31, February 28, March 31, April 30, May 31, June 30, July 30, September 3, September 29 and October 31, 1903. Vouchers No. 439, 473, 492, 513, 537, 564, 592, 618, 638, 665, 686 and 716 covering respectively, Items numbered 96 to 107, inclusive, are each in the sum of $416.66, and are dated respectively, as follows: November 30, December 31, 1903, Jan-

uary 30, February 29, March 31, April 30, May 31, June 30, July 31, August 31, September 30 and October 25, 1904.

It is admitted by The Kansas City Southern Railway Company and the Cambria Steel Company that the amounts stated in said Trimble vouchers were paid to Mr. Trimble at the date of such vouchers.

Said parties objected to the introduction of each and
217 all of said vouchers in evidence on the grounds set forth in numbered paragraphs 1 to 7, inclusive, 9 and 10 of their written statement of objections and in support of their objections, asked leave to offer evidence, documentary and oral, for the purpose of showing that the services covered by said items, included services foreign to this litigation and upon issues on account of which costs as between solicitor and client may not be taxed, if they may be taxed on any issue, and were excessive; and the statement read into the record in connection with the offer in evidence of the voucher covering Item No. 82 applied also to the foregoing vouchers covering Items No. 83 to 107, inclusive. Said objections to the introduction of said vouchers were, by the Master, overruled, and said offer to introduce evidence at this time in support of said objections was, by the Master, denied, to which rulings of the Master, said parties duly excepted.

Voucher No. 769, covering Item No. 108, is a receipted statement from H. S. Mecartney to the Guardian Trust Company, dated Dec. 8, 1904, representing the sum of $5,000.00 advanced by the company as a retainer for services in the Kansas City Suburban Belt Railway Company suit and other litigation of the Trust Company.

Voucher No. 960, covering Item No. 111 is a receipted statement from H. S. Mecartney to the Guardian Trust Company, dated Sept. 27, 1905, representing a payment of $5,000.00 on account of attorneys fees and expenses in connection with the Kansas City Suburban Belt suits. Attached to said voucher are the following letters:

"Sept. 18, 1905.

To the Executive Committee of the Guardian Trust Company, Kansas City, Missouri.

Gentlemen:

218 I expect to present a third formal report on the Belt Company litigation a month hence, or about the time of the annual meeting.

We are now putting in the testimony on behalf of the Guardian Trust Co., and much the greater part of it has been taken.

The record, abnormally long when I took the case, has in spite of our efforts nearly trebled in volume, making, as I believe, by far the longest record ever made in a court of justice.

I am satisfied that, not only the responsibility for this, but the cost of it, including the greater share of our own law fees, will ultimately be placed of record against the opposition.

At the instance of the Southern people, Judge Philips has enjoined our State Court suit, as we expected he would do. We appealed to the December term of the U. S. Court of Appeals; and hope to have decided in this appeal the chief point on which the Southern Company relies to escape ultimate liability for the Belt Company's debts.

While issues have broadened, it is only the dragon rousing itself to its fullest fury, and it cannot be long, in the nature of things, until the final collapse.

I now recognize that the conditions surrounding our fight are such as were outlined by some members of the committee, and far worse than I had reason to believe. Yet there is nothing to do but to stick by the game and rain blows as hard as we can.

I consider that the imposition upon the Trust Company arising from the making of this enormous record, is so gross and rank that it is now not only a duty to the community, but the part of simple business manhood to stay by the fight and place the responsibility for this unnatural
219 abuse of the court as a forum of justice.

However, over $22,000.00 annually runs upon our claim as interest, and it is a fight worth while.

In inviting the continued co-operation of the Committee, I will continue to take and constantly invite the fullest responsibility possible, and give the fullest and most earnest assurances of ultimate recovery. If at any time the Committee, or any of its members, should seriously doubt our ultimate recovery, I will back it up with such earnest testimony of other lawyers as will, I am sure, dispel all doubts.

My prophecies as to an earlier ending of the accounting case have not come true. However, the Texas case was got-

ten out of the way much earlier than I anticipated and in a very profitable manner.

I have, as I hope, adhered fully to the promises I made to give the litigation special preference and unremittent attention. Mr. Rosenberger has, under my direction, given nearly all of his time and physical energy to the work assigned him; and I have given much, the greater part of mine since December 1st last.

In my original suggestions as to retainer for the purpose of paying local and assisting counsel, and in order that the burden should be a "cheerful" one, I said that, if $5,000.00 were paid me "I would hope to make it last until a decree were reached in the Kansas City case. If greatly disappointed as to my expectations as to when this point would be reached, I would not call for any more money unless I could make it clear that I had paid out the greater part of this as expenses, etc., and that the matter was too heavy for me to carry without some other additional payment on account."

In the Executive meeting, I later suggested that it would probably be better to have the ordinary expense account of witness fees, etc., run through me, instead of sending bills from time to time to the Committee, etc., and the account was opened in that way, viz: I to pay all the ordinary expenses and account to the company therefor.

I have been greatly disappointed as to the closing of the main suit, and of course had no idea—not even the faintest idea—that conditions were bad enough to warrant the trebling of the then abnormal volume of evidence.

I have not only paid out the greater part of the $5,000.00 as expenses of assisting counsel, but have also paid out $2,712.65 for travelling expenses, expert fees, etc., as follows:

Travelling expenses of self and assistants and hotel bills, stenographic work, etc.,	$ 758.58
Advance costs, printing, stenographer, copies of pleadings, and miscellaneous items as per statements of Mr. Rosenberger,	735.22
Expert Fees	896.66
Printing	231.50
Miscellaneous	90.69
	$2,712.65

Statements and vouchers to be given on later accounting.

There are also bills payable at once amounting to about $1,000 more for expert work. These expenses will come back to us in ultimate decree.

I think therefore it is but just to myself to request another payment of $5,000.00 on account. With the expenditures to be made in the next few weeks, it will leave me only a couple of thousand dollars, and that of course will be used up shortly. It gives me nothing net for my time so far, and I think you will all appreciate that this is a much of a burden as I ought justly to carry for the present. The greater and heavier the burden of the suit, the more will I expect to carry, in order to back up in this tangible way my convictions and promises as to the ultimate outcome.

The court has lately ordered a payment on account to Judge Douglass to the effect that the Belt Co., and the
221 Southern Co. shall together pay him $4,000.00, and the Guardian Trust Company shall pay him $2,000.00. However, the order provides, of course, that these sums shall await the final outcome and be taxed as costs in the case.

Judging by the abnormal size of the case, I feel that I have so far conducted it as economically as possible.

As there is not apt to be an Executive meeting for some time, and as I need this money now, I would greatly be obliged if the members of the Executive Committee would authorize the Treasurer to give me the payment requested.

Bidding constantly for continued co-operation and backing of the Trust Co., which is all the writer needs and desires in this case, I remain,

Truly,"

"John A. Prescott,
Financial Agent.
Fidelity Trust Company Building.
Kansas City, Mo.

Telegraphic Adress
'Japscott, Kansas City.'

26th of September, 1905.

C. W. Hastings, Treasurer,
City.

Dear Sir:

In reply to your letter of the 21st instant, I beg to say in reference to the further advance of $5,000 to H. S. Mecartney

on account of the expenses of the litigation which he is conducting against the Kansas City Southern road, that inasmuch as we have employed Mr. Mecartney and he has taken the suit up with apparent vigor, I think we ought to supply him with the sinews of war; and I am therefore favorable to advancing him the $5,000 which he asks for.

With regard to his bill of $200 for services in connection with the settlement of the claim of Wash Adams, I
222 will say that I approve its payment.

I also approve the payment of Mr. Mecartney's bill of $150 for services in connection with the Durango Concession matter.

Yours truly,

JAP-GCW JOHN A. PRESCOTT.
Payment approved:
C. W. Hasting."

"Guardian Trust Company,

Kansas City, Mo.
Sept. 21, 1905.

S. W. Willey, Esq.,
Bryant Building,
City.

Dear Sir:

I enclose you herewith copy of communication received today from H. S. Mecartney, the attorney of the company, relative to our paying him another $5000.00 on account of expenses in the litigation he is conducting; also bills for his services in the matter of Wash Adams' bill and the Durango Concession matter.

In connection with the above, wish to state that since Mr. Mecartney has had charge of the litigation, we have paid no expenses in the matter, with the exception of the bills of the court stenographer for transcript of testimony and the $2,000.00 allowed by the Court to Judge Douglass for his services as Special Master, this amount being noted in Mr. Mecartney's communication.

Kindly advise me immediately if as a member of the Executive Committee, you approve the payment of the amounts as stated in Mr. Mecartney's communication, and oblige.

Yours very truly,

C. W. HASTINGS,
Treasurer."

Encl.

I don't see any way but to pay.

S. W. WILLEY, (in lead pencil)
at bottom

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223 Voucher No. 1041, covering Item No. 114, is a receipted statement from H. S. Mecartney to the Guardian Trust Company, dated Feb. 16, 1906, representing the sum of $5,000.00, advanced on account of expenses and attorneys fees in connection with the Kansas City Suburban Belt and Port Arthur Channel & Dock suits.

Voucher No. 1164, covering Item No. 116, is a receipted statement from H. S. Mecartney to the Guardian Trust Company, dated Aug. 15, 1906, representing a payment of $5,000.00 on account of expenses and attorneys fees in connection with the litigation against the Kansas City Southern Railway Company.

Voucher No. 2199, covering Item No. 117, is a receipted statement from H. S. Mecartney to the Guardian Trust Company, dated July 18, 1907, representing a payment of $7,500.00 on account of expenses and attorneys fees in connection with the litigation against the Kansas City Southern Railway Company.

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction of said vouchers, No. 769, 960, 1041, 1164 and 2199, covering respectively Items No. 108, 111, 114, 116 and 117, on the grounds set forth in numbered paragraphs 1 to 10, inclusive, of their written statement of objections. Said parties further objected to the admission of said vouchers and to any and all evidence in support of said items on the same grounds afterwards urged to the admission of any evidence in support of Item No. 135, being the judgment in the case of H. S. Mecartney vs. Guardian Trust Company, affirmed by the Missouri Supreme Court, 274 Mo. 224, for the following reasons:

(1) The opinion of the Supreme Court affirming the said pudgment is contrary in many particulars, to the actual facts in the case, and was based on a misunderstanding of the law and facts.

(2) Admissions were made in said cause by counsel
224 for the Trust Company and its Receiver in reference to claims made in said case which were not supported by the facts.

(3) So much of the services as were rendered by the plaintiff in said action and pertain to the issues here involved, were rendered under a contract by which the compensation of the plaintiff therein was fixed, which compensation was fully paid to him prior to the filing of said action.

In support of these objections, The Kansas City Southern Railway Company and the Cambria Steel Company asked leave to offer in addition to other evidence showing the statements made in the pleadings or by the courts or by witnesses in said case of H. S. Mecartney vs. Guardian Trust Company; and said parties thereupon read into the record, the following statement purporting, in part, to contain allegations in the first count of the amended petition on which such case was tried. Item No. 135 being the amount of the judgment on said first count (figures in paranthesis in the following paragraphs refer to pages in appellant's abstract of the record in said cause except that part of the paragraphs where reference is made to pages of the decision of the Supreme Court in Mecartney vs. Guardian Trust Company, 274, Mo. 224, in which case, references are to the pages in said report):

12a. After plaintiff had been so retained and employed in said Belt Litigation and during the progress of the professional work which he performed therein as hereinafter shown, there were several other court cases and controversies which grew out of the same, or which cases and controversies in their issues of law or fact grew out of some of the issues involved therein or closely related thereto, in which cases and controversies plaintiff rendered various legal services which became part and parcel of the one retainer and employment of plaintiff known as the 'Belt Litiga-
225 tion'; which said cases and controversies were as follows, viz:

* * * * * * *

(2) Cases No. 23,066, 23408 and 28277 in the Circuit Court of Jackson County, Missouri:

In the first of which cases, commenced March 15, 1905, defendant sought as plaintiff therein to recover of the said Southern Company as an alleged successor by consolidation of the Belt Company, the amount of the notes and open account which said defendant had against said Belt Company, then amounting to about $500,000 and which were involved in said 'Accounting Case;'

In the second of which cases, commenced on or about March 15, 1905, the defendant sought as plaintiff therein to recover of the Southern Company upon the same ground or basis about $38,000 by reason of defendant having paid the same to the First National Bank of Kansas City as indorser or joint maker of a note given for the benefit of said Belt Company;

And in the third of which cases, commenced July 2, 1906, defendant as plaintiff therein asserted claims of about $30,000 against said Southern Company as the successor by consolidation of the Gulf Company on notes and open account.

Said three cases above became known as the three 'State Court Cases' and are so referred to herein.

At the time that plaintiff's employment in said Belt Litigation ended as hereinafter stated, various demurrers and motions in such proceedings had been overruled by the court and answers had been filed therein and the said causes and each of them were then pending on petition and answer and remained undisposed of. (6, 7).

13. At the time of plaintiff's retainer and employment as aforesaid, there was another branch of the controversy known as the 'Belt Litigation' and pending in the
226 United States Circuit Court held at Beaumont, Texas, and covered by said employment as follows:

A consolidated case known as Nos. 10 and 11 in equity, of the December, 1904 Term of the said United States Circuit Court. In one of said cases, the Provident Life & Trust Company as Trustee, was complainant, and the said defendant Guardian Trust Company was defendant, and said complaint as trustee for bondholders of the Port Arthur Channel & Dock Company claimed, among other things, that said Guardian Trust Company as an alleged subscriber to the capital stock of the said Dock Company was laible to the complainant for a deficiency decree against the Channel & Dock Company then amounting, with interest, to upwards of $1,500,000; secondly, that it had dominated the Dock company in reference to the various dealings in reference to the sale of bonds and stock issues, construction contracts and various other transactions, and that defendant was also liable to the Dock Company for said sum upon the said second ground of complaint.

14. In the other of said two causes, the Barnett & Record Company, a judgment creditor of said Dock Company, was complainant and made similar claims to those last stated

against said Guardian Trust Company, which was among the other parties made defendant; and the said Dock Company was a party defendant thereto and made similar claims to those last stated against said Guardian Company. In the aforesaid two causes, the said Guardian Company asserted claims against the Dock Company for the amount of about $27,000. Prior to said December 6, 1904, certain proceedings had been had in said consolidated causes, various pleadings filed therein and about 4,000 pages of evidence had been taken.

That thereupon at the special instance and request of the defendant, plaintiff entered his appearance in said
227 cause and the appearance of one Clifford Histed, Esq., a practicing lawyer of Kansas City, duly licensed to practice law in the said United States Court, as counsel for the defendant, and proceeded to prosecute its defenses and its claims in said cause, and to protect its interests in said Texas case.

15. Thereupon, and between said December 6, 1904, and April 10, 1905, and at various dates and times during said period, which plaintiff cannot more particularly specify than is specified in the following itemized schedule, plaintiff and his said assistant counsel in his behalf, at the special instance and request of defendant, rendered professional legal services to defendant therein, which services so performed and rendered by plaintiff are intemized in the following 'Schedule A.'

'Schedule A.'

Being Schedule of Services of Plaintiff in said Texas Case.

In December 1904.

(1) Plaintiff made a stipulation to pass the case at the December term, and had same continued December 10.

(2) He examined the various pleadings, bills, cross-bills, answers, and intervening petitions in said cause, amounting to over 200 typewritten pages.

(3) About December 10, he retained Clifford Histed, of Kansas City, as assistant counsel in said cause, and had appearance of himself and assistant entered as counsel for defendant on or about December 21.

(4) He looked up the law of the issues therein, and prepared to make a motion to recall certain orders and sustain the demurrers and exceptions filed therein by the defendant.

(5) He looked up a prior decree of foreclosure which had been entered in said cause, and conferred with officers
228 of defendant as to entry of a decree of sale of the Port Arthur and Town Site Company, same being finally entered by consent with agreement as to 'upset price' of $100,000; decree entered December 21.

In the year 1905.

(6) He ordered and received from the clerk, January 21, a full memo, of all orders entered in said cause, and all papers filed therein, and studied up said records, the same consisting of 312 minutes of orders and filings.

(7) He passed upon a form of resignation of said defendant as trustee in certain railroad mortgages involved in said suit, and upon an order of court making substitution of another trustee, in January and February.

(8) He had said assistant, Histed, make an abstract of the record of testimony and exhibits therein, a total of about 4,000 pages, said abstract being about 128 type pages, in January, February and March.

(9) Plaintiff and his said associates prepared for a hearing of said cause at the April, 1905, term, looked up law, and prepared digest, brief of issues, and served notice of the hearing on March 22.

(10) Took up about March 20 negotiations for a compromise with Mr. Moore, counsel for opposition, Mr. Harris, President of defendant, Mr. Histed and others, and had negotiations for same extending over about ten days' time. Drew and re-drew various propositions and settlement papers as negotiations proceeded; met executive committee of defendant in respect to settlement, made report to them, and had papers signed and settlement consummated on April 4, 1905.

In and about the performance of said services in said Texas case, plaintiff incurred a reasonable expense
229 for local and associate counsel therein of upwards of $1,300.

Said settlement as made was an almost completely successful outcome of the litigation for the Guardian Trust Company, having been made upon the following basis, viz:

The said Dock Company and the said Provident Company released the defendant from their said claim of over $1,500,00. The defendant released its claim against the said Dock

Company of above $27,000, and also released other claims of the value of about $2,000, and paid certain costs amounting to $500.

And plaintiff is unable to more particularly specify the services so rendered or to more particularly specify the dates or times when said services were rendered than is set forth hereinabove. (8, 9, 10).

(Schedule B.)

(10) Examined the Reorganization Plan of the Southern Company; looked up law with reference to liability of Southern Company, and, with the aid of plaintiff's office assistants, Brown and Price, prepared preliminary type briefs thereon, made digests of cases, and completed first printed briefs on said issue, January 15 to June 8.

* * * * * * *

(14) Drew petition for filing suit in Jackson County Circuit Court against the Southern Company upon the notes and open accounts originally held by defendant against the Belt Company, amounting to over $500,000, said petition consisting of 33 counts; and commencing suit March 15, 1905 (Case No. 23,066).

(15) Drew similar petitions in case between same parties in same court, 3 counts, upon an original claim of about $38,000 against the Belt Company, known as the '1st National Bank Claim,' commencing suit March 15, 1905 (Case No. 23,408).

* * * * * * *

(34) Made up a supplemental brief upon the consolidation issue, and also letter suggestions to John G. Johnson,
Esq., of Phila., and C. O. Tichenor, Esq., of Kansas
230 City, counselors of law, and obtaining favorable report from latter on said issue.

* * * * * * *

(43) Prepared type brief upon the right of defendant to file cross bill in said case, completed about May 15.

* * * * * * *

(48) Prepared draft of petition for filing suit in Jackson County Circuit Court by defendant against Southern Company upon notes and open account, which defendant originally held against the Gulf Company, amounting to about $30,-

000 (12 counts); commenced suit July 2, 1906, Case No. 28,277.

* * * * * * *

(52) Prepared printed 'Suggestions for Plaintiff' in said three 'State Court Cases.'

(53) April 1 to July 1, prepared to push the three State Court Cases to trial, giving notice to call up demurrers therein, appeared in court several times, having May 18 set for hearing demurrers.

(54) Appearing in court on said day and having demurrers overruled; examining answers filed in each case about three days later; drawing and filing reply to said answers, appearing in court on motion of opposition to stay proceedings, filed May 28; preparing for and resisting said motion; same being overruled.

(55) Preparing motion to strike out pleas; preparing motion to set causes for trial and advance the same; preparing printed suggestions thereof and letter suggestions for the judges in respect thereto; arguing motion to set and advance cases in court, same being overruled.

(56) On or about June 22, prepared and served notice on opposition to file any proposed amendment to answer in said cases within 30 days.

(57) Appeared in court by Rosenberger and had said court cases set for trial December 20, 1907.

(58) Made further memo, brief upon law of damages and attorney's fees in the injunction issue in Provident
231 Life case, and had negotiations with counsel for opposition in respect to settling such claim, and drew and filed suggestion of damages therein.

(59) Prepared and completed final brief on consolidation issue, having same printed—type held some weeks and brief revised and reprinted about June 13.

(Extract from letter of Harry S. Mecartney to the Guardian Trust Company, dated October 23, 1905.)

Gentlemen:

Your acting president has requested me to make a report of matters under my charge in time for the coming annual meeting.

You understand that no regular counsel was elected by the directors or executive committee for the past year, and when

the matter was brought up late in the fall the writer suggested that there was no absolute occasion for such a salaried official; but that matters could be referred from time to time, as they arose, to counsel and he be paid for work as actually done. This suggestion was adopted; and the writer believes it a far better plan than the salary plan and conduces more towards prompt disposition of business and is more economical in the end.

Quite a number of matters, law suits and claims, independently of the Belt & Dock Company litigations, have been investigated and disposed of, and some half dozen legal opinions rendered upon matters of vital import. The total amounts paid the writer thus far, together with bills presented at the end of this fiscal year have been less than $2,100.

I was at first reluctant to attempt to serve the company as to its general matters, fearing that the Belt litigation was enough for me to undertake. But with the help of com-
232 petent assistants, I have been able to take care of them with, as I hope, reasonable promptness.

As to matters pending and disposed of, I report:

(1) The bill of Trimble and Braley for over $22,000 including interest.

Active and almost constant negotiations for a settlement of this bill extending over a period of eight or nine months resulted in an agreement of compromise between the claimants and a majority of the executive committee on the basis of a payment to Messrs. Trimble and Braley of $9,000 in full settlement. The executive committee passed a resolution, adopting these terms, and against this there was lodged a protest by Mr. Prescott which was filed under the provisions of the order discharging the receiver.

This brought the matter up to the court to affirm or reject the compromise, and after argument it was rejected. In the meantime, Messrs. Trimble and Braley had brought suit in the State Court and the matter stands referred to a referee, Mr. Ball, to take evidence.

2. The claims vs. The Northern Connecting Company.

These claims of the Guardian Trust Company, aggregating about $66,000 had been presented in an intervening petition which the trust company had filed in the foreclosure proceedings on said railroad. It was asserted that the same were preferential claims. Testimony had been taken and the mat-

ter was pending on a reference to Judge Douglass. The master, last spring, made an exceedingly long and exhaustive report of about 100 typewritten pages, in which these claims were rejected, except as to the amount of $1,161.50, which he allowed the Trust Company.

Other parties offered objections to his report, but he has never finally disposed of them. After investigating
233 the matter, the writer concluded, and so reported to the then president, that there was no prospect of having the report overruled and we did not prosecute the matter further.

3. The Mo. Railway Construction Co., Debenture Bonds Amount $53,433.17.

The writer went went east in the summer time and retained counsel there to make inquiries and collect data in regard to the assets of the concern. I, in the meantime, pursued my inquiries in Chicago and finally got track of the books and I have been promised that they will be at my disposal for inspection within a very few days. If they do not turn up, I shall at once take proceedings in court and examine under oath the parties who were last in control of the company and who should know of its affairs.

4. The Texas suit at Beaumont: in which the Channel and Dock Company, set up a claim of stock liability for $1,500,000 against the Guardian Trust, and in which the Guardian Trust Company claimed about $30,000 as due from the Dock Company, was compromised about the first of April last, as heretofore reported.

'The Benedict Zinc case' in New York, was, as has likewise been reported, finally decided against the Trust Company and the judgment was satisfied.

The Quincy 'Zinc' Case at Kansas City was compromised.

The First National Bank case at Kansas City was finally decided against the Trust Company, and the judgment was paid. The amount, about $35,000, with interest, is a valid claim against the Kansas City Southern Company and the latter has been sued in the State Court therefor.

5. The Intervention Petitions in the foreclosure case of the Pittsburg and Gulf, involving claims for the services of counsel, rendered such Trust Company, as trustee in
234 the mortgages on the Texas and Louisiana part of the old Gulf System, were investigated and reported upon

adversely by me last spring, and as a part of the items of settlement of the Texas litigation, they were dismissed as to such items.

6. As to the claim of $22,000 of Coupons vs. the Gulf Road; I investigated this claim last spring. My associate, Mr. Histed, made me an exhaustive seven page report thereon, and after considering the matter thoroughly with him, I concluded that there was no prospect of recovery and I orally reported the same to the president and executive committee, expecting later to follow it up with a formal report, for which this report is now tendered.

7. Other claims.

Set up by way of intervention in various proceedings, which are worthy of note are involved in the Belt accounting case and need not be here commented upon; and with the exception of those so involved the 'slate' had been practically cleared.

8. The Bierce Case.

This is the case, as is well known, in which the receiver for the Guardian Trust Company was appointed, * * * (314, 315, 316).

H. S. MECARTNEY.

In his claim made to the Trust Company on March 26, 1908 (460 et seq.) Mr. Mecartney made the following statement of the amount which he claimed to be due him;

Without attempting to divide or itemize the total figure named, I suggest in brief the following figuring:

235	You have paid me on account		$ 27,500.00
	Total cash disbursed in full to date		7,559.36
	To apply on fees		$ 19,940.64
	1. The suits based upon the 'Gulf' notes of about $30,000.00 (including interest) and the First National Bank claim of about $40,000, are not within the scope of the original retainer, and represent an earned fee of about	$ 5,000.00	
	2. The fees in the first ijunction case, which was tacked onto the Belt foreclosure suits, and which are taxable in whole or in part upon a dismissal of the Supplemental Bill therein, represents a minimum fee earned as of two years ago	5,000.00	

3. The Texas Channel & Dock Co. case, which was consummated by an exceptionally favorable settlement three years ago, represents a minimum fee as of that date of	5,000.00	15,000.00
		4,940.64
Add figure above given		55,000.00
Gives		$59,940.64

as representing upon this tentative basis all services in the Belt-Southern cases, and for incidental work (462.-463).

In his cross-examination Mr. Mecartney testified (469):

Q. Now, you further speak of the suits based upon the Gulf notes of about $30,000.00 and the First National Bank claim as not within the scope of your original retainer?

A. Right.

Q. You are suing in this case for the value of services performed in the Gulf note case as being within the scope of the general Belt litigation, are you not? A. I am.

Q. And the First National Bank claim of about $40,000.00 was included in the Cambria suit by amendment, was it not?

A. It was.

Q. And it was also made a basis of the second of the three state court suits? A. Correct.

Judge Frank G. Johnson, judge of the Jackson County Circuit Court, in his opinion, said:

236 Thus far nothing has been said concerning the so-called Dock litigation, in which plaintiff was also employed at the same time and as part of the same retainer. This was a somewhat similar litigation pending in the Federal Court at Beaumont, Texas. The Trust Company had a claim against the Port Arthur Channel and Dock Company of Texas for about $27,000.00. The Southern Company, through the Dock Company and its receivers, and through the trustee of the railroad mortgage issued by the Dock Company was asserting a claim against the Trust Company for about one and one-half millions of dollars, arising out of an alleged unpaid stock subscription claimed to have been made by the Trust Company to the stock of the Dock Company and other claims. The litigation had started in Texas at about the same time that the Belt litigation had started in Kansas City. Before plaintiff's employment the legal sufficiency of this large claim made against the Trust Company by these other parties had been tested by demurrer, which upon full argument by the counsel for the Trust Company had been overruled by

the Federal Court in Texas, the Trust Company had answered, and about 2,000 pages of testimony had been taken in the case on the merits. A few months after his employment, plaintiff with the aid of his assisting counsel, Mr. Clifford Histed of this bar, consummated a settlement of this case by the terms of which the Trust Company was released from said claims of about one and one-half millions of dollars, which were being asserted against it, in consideration of which release the Trust Company released its claim against the Dock Company of about $27,000.00, and released other claims to the value of about $2,000.00 or less and paid certain court costs, thereby relieving the Trust Company of all liability for this large claim and extracting it from a long and burdensome litigation, which had already been a serious drain upon its resources and which was likely to be even a greater burden in the future. (1425, 1426) * * *

237

The Trust Company put into his charge the collection of an additional obligation of about $31,000.00, exclusive of interest, due it from the Belt Company, arising out of the endorsement of a note held by the First National Bank, upon which note the Trust Company's liability as endorser had not been adjudged until some time after plaintiff's employment. The Trust Company also charged plaintiff with the duty of collecting from the Southern Company certain promissory notes and an open account due it from the Kansas City, Pittsburg and Gulf Railroad Company, which were not within the scope of his original retainer. (1428).

The Supreme Court of Missouri in its opinion in Mecartney vs. Guardian Trust Company, 274 Mo. 224, in discussing the services rendered, said:

At the time he was employed there were two cases pending in which defendant here was interested, as heretofore noted, designated as the Suburban Belt case and the Channel & Dock Company case. (246).

Afterwards suit was brought in the state court, but the claim finally was enforced and collected in the federal court in the Suburban Belt case (246).

A few months after his employment judgment was obtained against the Trust Company as surety for the Belt Company in the amount of over $30,000.00, which the Trust Company was obliged to pay. He immediately brought suit against the Southern Company for reimbursement of the amount. This was not in contemplation and should not have been in the

minds of the parties at the time he was employed, because the liability had not accrued. This, with the suit for $400,000.00 against the Southern Company and a suit on account of $30,-
000.00 against the same company, were called 'the State
238 Court cases'). (247).

It is suggested that the plaintiff 'in the first count of the petition sued for compensation for services rendered in the Belt and Channel & Dock litigation, and nothing more' and that 'he is not entitled to anything on account of extra work' because 'he has not sued for it'.

It seems to be conceded in this suggestion that a number of causes which were not in contemplation at the time of plaintiff's employment were undertaken. What has been said in paragraphs I and II settles that point. But it is proper to mention that the first count, after mentioning the employment in the Belt case, distinctly alleges the undertaking of additional work, for it says: 'There were several other court cases and controversies which grew out of the same, or which cases and controversies in their issues of law or fact grew out of some of the issues involved therein or closely related thereto, in which cases and controversies plaintiff rendered various legal services.' It then refers to the original employment for authority to handle those extras. (254, 255).

Throughout Mr. Mecartney's connection with this case, Mr. J. C. Rosenberger had the brunt of the work. Mr. Mecartney testifying on this subject said:

Mr. Rosenberger's services were chiefly in the prosecution or in the taking of the testimony in the Belt accounting case, and in preparing briefs from time to time on the question of practice, reports from time to time on the progress of testimony and upon questions that arose, and also aided in looking up the propositions of law and aiding in the brief work. . . He also appeared with me in court at the most crucial moments in the argument of the most important motions. . . He interogated witnesses in detail, and took nearly all of the evidence that was taken, and attended upon the
taking of the evidence. (201).

239 Mr. Mecartney figured the value of Mr. Rosenberger's services at $15,500.00.

The amount which we finally settled on as a total payment was $15,500.00 and interest on unpaid amounts that ran from the time I was discharged.

The Referee: How was that, $15,000.00 in addition to what he had?

A. No, $15,500.00 including the $4,500.00 and 6 per cent interest from March, 1908. (767, 768).

Judge McCune, the referee before whom said cause was tried, after an exhaustive trial of the case, on a record containing over 1270 pages, found that the plaintiff was entitled to 'a balance of $14,860.57' (150, 154).

Mr. Mecartney having made a report upon the condition of the Trust Company litigation stated to that company on the threshold of his employment, in answer to a request for an estimate as to the amount of his fees in the Belt and Dock cases that 'if the cases should be settled before final decree my guess is that such fees would run from $10,000.00 to $15,000.00. If fought through to a final decree and through the Court of Appeals they might run up to $20,000.00'. He figured the time required to realize upon the claim at from two to two and a half years (142). At the time this estimate was made, he had made to the Trust Company a full report upon the character of the litigation and the difficulties to be encountered. (556 et seq.) Throughout his connection with the litigation, Mr. Mecartney had the idea that he would recover costs as between solicitor and client in the litigation. In his letter to the Trust Company of June 25, 1907, after all the evidence had been taken in the case, he said:

We are entitled, as said several times in my former letters, to $35,000.00 or $40,000.00 costs and damages, stenographers' and law fees, etc. in the federal court case when a
240 decree shall be entered therein. (342).

On May 26, 1906, he stated that he expected to collect 'as costs $2,000.00 advanced the Master, and about $7,000.00 stenographers' fees, and fees of experts and officers and employes of the company working up statements, etc., say $16,000.00. Portion of attorneys' fees incurred—at least $15,000.00' (330).

In his letter of January 26, 1906, after all of the evidence had been taken, he said:

I expect also, if I get the case to a final decree before an impartial judge, to collect the sum of $15,000.00 or $20,000.00 expenses for stenographer's fees, experts and time of officers, etc., and in addition some $20,000.00 or $25,000.00 law fees. (220).

On March 19, 1908, he said:

If we succeed in having a fair and impartial hearing, we will get back $50,000.00 or more on account of law fees and damages in addition to regular court costs. (456).

As the question of taxation of costs as between solicitor and client originated with Mr. Mecartney we offer his following statements in the record in his case for the purpose of showing that the demand in this case was not governed by the rules, principles and practice in equity, but that he recognized the claim for such costs as being a precedent.

Q. In a letter from you to Mr. Prescott of date February 28, 1906, you estimate the Trust Company's claim against the Belt or Southern Company for attorneys' fees, stenographers' fees and other expenses at $40,000.00. Upon what was that estimate made?

A. That estimate was made upon the basis outlined in my preliminary report that the court, notwithstanding it was considerable of a precedent, would allow us an attorney's fee for the frivolous litigation that had been prosecuted on be-
241 half of the accounting cases . . . . I ought to say in this connection that I found out in the prosecution of my inquiry that the Federal Court, and under practically the same status (evidently he said 'statutes'), had allowed attorneys' fees as a matter of course, and had stopped the practice on the ground that it could not tell when litigation was frivolous or not, and for that reason had dropped it, but there was no reason why the court would not take it up again in a case of this kind. (1194-1195).

The matter was new, and more or less a precedent. (344)

Mr. Mecartney further testified:

I never expected the court to allow all of our attorneys' fees in the entire litigation . . . I may several times have claimed that, but I don't think I did, but I did feel that if we got an impartial hearing in that case that the court would allow us a good round share of our attorneys' fees in the accounting matter on the ground that the litigation had been trivial, and the record had been made on false pleadings, and a patent theory, a theory patent on the face of the pleadings, common business rules, etc. I never stopped to consider just how much, but that it was a proper claim to make in negotiations for settlement, and to earnestly make, and that the court would tax a good round sum against them as attorneys'

fees in the accounting issue only; not on the consolidation issue, but on the accounting issue, possibly even on the intervention issue, as it developed. (344).

It only included the accounting issues, and not taking into consideration any other side issues. (1194).

The foregoing objections to the admission of said vouchers, Nos. 769, 960, 1041, 1164 and 2199, covering Items Nos. 108, 111, 114, 116 and 117, were by the Master overruled, and said offer to introduce evidence in support of said objec-
242 tions was by the Master denied, to which rulings of the Master, said parties thereupon duly excepted.

Voucher No. 2309, covering Item No. 119, is a receipted statement from Edward P. Gates to the Guardian Trust Company, dated March 28, 1908, representing a payment of $3,000.00 as a retainer for said Gates and associate counsel in the matter of litigation with The Kansas City Southern Railway Company in accordance with a letter of Gates, Sea & English, dated March 28, 1908 thereto attached. Said attached letter is as follows:

"Law Offices
Gates, Sea & English
Scarritt Bldg.,
Kansas City, Missouri.

Kansas City, Mo. March 28, 1908.

Guardian Trust Company,
Kansas City, Mo.

Gentlemen:

In answer to your inquiry, through your president, as to whether we could arrange to take charge of the controversies between your Company and the Kansas City Southern Railway Company, we beg to inform you that no obstacle exists to our assuming the litigation if we can have assistance of the executive officers of the Trust Company. The record has assumed such enormous proportions that much preliminary work must be done to enable counsel to present and protect the claims of your company and to permit of a reasonable estimate of the work involved, the time probably required and the fees reasonably to be expected. We understand that immediate attention is required in certain matters and we suggest that a retainer of Three Thousand Dollars ($3,000.00) to cover present fees would be reasonable. For this, we and associate counsel will investigate the issues in the controversy and advise you thereon, giving meantime, attention to all essential details of the present court proceedings.

At the filing of this report, should you then determine that our course of action does not commend itself to your
243 executive committee or should you determine that the probable expense would be excessive, there will be at least no further charge for us or our associates and no expense will be incurred without advising you prior to incurring same.

We are, however, unwilling to undertake these controversies unless it is in good faith sought to dispose of them as rapidly as the interests of your company will permit.

It is understood that this employment includes only the litigation covering your disputes with the Kansas City Southern Railway Company, whether originating with your company or the constituent parts of the Southern Company, which we cannot at this time more explicitly state but which will be determined as we become more conversant with the records.

Should this be satisfactory to you, upon advice to that effect work will begin at once.

Yours very truly,

GATES, SEA & ENGLISH
(Signed By Edward P. Gates."

JAS-MH

Voucher No. 2500, covering Item No. 120, is a receipted statement from Edward P. Gates to the Guardian Trust Company, dated June 25, 1909, representing, among other items, a payment of $4,000.00 on account of legal services rendered in connection with the Belt Line litigation.

Voucher No. 2569, covering Item No. 121, is a receipted statement from Edward P. Gates to the Guardian Trust Company, dated Dec. 14, 1909, covering the payment of $2,000.00 on account of services rendered in Cambria Steel Company vs. Guardian Trust Company and Guardian Trust Company vs. The Kansas City Southern Railway Company.

Voucher No. 2673, covering Item No. 122, is a receipted statement from Edward P. Gates to the Guardian
244 Trust Company, dated August 1, 1910, representing the payment of $3,000.00 on account of services rendered in connection with Cambria Steel Company vs. Guardian Trust Company and Guardian Trust Company vs. The Kansas City Southern Railway Company.

Voucher No. 2747, covering Item No. 123, is a receipted statement from Edward P. Gates to the Guardian Trust Company, dated Feb. 15, 1911, covering, among other items, the payment of $4,000.00 on account of legal services in Kansas City Suburban Belt Railway Company vs. Guardian Trust Company.

Voucher No. 2824, covering Item No. 124, is a receipted statement from D. J. Haff, to the Guardian Trust Company, dated Oct. 27, 1911, representing the sum of $1,000.00 paid for retainer and on account of fee for preparing brief and argument in the United States Court of Appeals on the hearing of the application of the Guardian Trust Company for leave to file additional briefs, as per stipulation filed in the Court of Appeals on June 21, 1911.

Attached to said voucher is the following letter:

"Law Offices
Haff, Meservey, Gorman & Michaels
Suite 906 Commerce Building
Kansas City, Mo.

Delbert J. Haff
Edwin O. Meservey
Charles W. Gorman
Willian. C. Michaels

Correspondents in
the City of Mexico.
Lics. Calero & Vera Estanol

Dell Dutton
Samuel D. Newkirk
Charles M. Blackmar
Lloyd T. Chockley
Frank G. Warren

Oct. 26, 1911.

Cambria Steel Co. vs.
K. C. Suburban Belt Co.
Guardian Trust Co. et al., K. C.
Southern Ry. Co. Intervenor.

Mr. J. F. Downing,
President Guardian Trust Co.,
New England National Bank, City.

My dear Sir:

In reply to your request for a statement of the fee to be
245 charged by me as associate counsel with Messrs. Gates and English, in preparing brief and argument in the United States Court of Appeals on the hearing of the application of Guardian Trust Company for leave to file additional briefs as per stipulation filed in United States Court of Appeals on the 21st day of June, 1911, upon the two ques-

tions set forth in said stipulation, I desire to state that the fee which I will stipulate as compensation for my services and those of the firm of Haff, Meservey, German & Michaels, in the above matter, will be Two Thousand Five Hundred Dollars, one thousand dollars of the same to be paid in advance as retainer, and the remainder of the fee after the submission of the said cause to the United States Court of Appeals.

It is understood that I and my associates will make a further study of the record in the above appeal and of the briefs filed therein and to be filed by Messrs. Gates and English, and will prepare and file additional brief or collaborate with Messrs. Gates and English in any briefs to be filed by them, as we may deem necessary, useful or expedient for the proper presentation of the case.

The fee named herein is, of course, exclusive of any expenses that may be incurred in the premises.

Very truly yours,

DJH*B D. J. HAFF"

Voucher No. 2881, covering Item No. 125, is a receipted statement from Gates and English to the Guardian Trust Company, dated Jan. 16, 1912, representing, among other items, the payment of $4,000.00 for services rendered in the Belt and Kansas City Southern litigation.

Voucher No. 2884, covering Item No. 126, is a receipted statement from Haff, Meservey, German & Michaels to the Guardian Trust Company, dated Jan. 18, 1912, repre-
246 senting, among other items, the payment of $1,500.00 for balance of services in the case of Cambria Steel vs. Kansas City Suburban Belt Company, Guardian Trust Company, et al.

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction of the foregoing vouchers, No. 2309, 2500, 2569, 2673, 2747, 2824, 2881 and 2884 covering respectively Items No. 119 to 126, inclusive, on the grounds set forth in numbered paragraphs 1 to 10, inclusive, of their written statement of objections. Said objections were, by the Master, overruled, to which ruling of the Master, said parties duly excepted.

Voucher No. 2954, covering Item No. 127, is a receipted statement from Trimble & Braley, to the Guardian Trust Company, dated July 31, 1912, representing the payment of

$10,198.13 in full payment of all claims and judgment rendered in favor of Trimble & Braley in case of Trimble & Braley vs. Guardian Trust Company. Attached to said voucher are the following letter and acknowledgment:

"Edward C. Wright, Trimble & Braley case.
Attorney at Law,
First National Bank Building, August 7th, 1912.
Kansas City, Mo.

Mr. John A. Prescott,
Liquidation Agent,
Guardian Trust Company,
Kansas City, Mo.

Dear Sir:

Upon receipt of the notification that the Supreme Court of Missouri had reversed the judgment in the case of Trimble & Braley against the Guardian Trust Company and has remanded the case for further proceedings in the Circuit Court of Jackson County, Missouri, in accordance with the opinion, I ascertained from Mr. Harkless that he did not desire to go further in the case. I then went over the opinion and the record with him and found that he had determined to his own satisfaction that further litigation was inadvisable,
for the reason that the opinion of the Supreme Court
247 left nothing to be decided but had finally disposed of
the matter, except upon the formal entering of a decree and determination of the amounts due.

I then prepared a motion in the Supreme Court to tax the costs of printing the abstract of the record and prepared and attached to the motion an attested copy of the bill from the printer, in the sum of $366.00. I also prepared, served and filed in the Supreme Court a notice to Trimble & Braley and John A. Eaton, their attorney of record, of the filing of our motion which was accepted and delivered to the Clerk of the Supreme Court on the 28th day of June, 1912.

At that time I learned that Mr. John A. Eaton, for Trimble & Braley, had filed in the Supreme Court a motion to tax the cost against us of printing their additional abstract of the record. No notice of this was given to us. Both motions are now pending before the Supreme Court and the Clerk informs me that there will probably be no argument heard upon these motions, but that at its next session the Court, upon its own inspection of the record, will decide the matter of these costs and advise the parties.

Then after consultation with you, I took up with Mr. Eaton and Mr. Braley the question of agreeing upon a record in the

Circuit Court which should finally dispose of this matter. We agreed upon everything except the question of taxing part of the costs against the plaintiffs in this case, and after carefully going over all the authorities and briefing the matter thoroughly, I decided that the chance of our recovering any of the costs in the lower court was so much against us that it would be a waste of the Company's money, and thereupon I entered into a stipulation for judgment in the sum of $12,560.41 which included interest to July 30th, 1912. This stipulation was prepared for signature by the parties and was accompanied by receipts to be signed by Judge J. McD. Trimble and Mr. C. A. Braley.

248 You will remember that Mr. Eaton had filed in this case, a notice of attorney's lien which was accepted by me on behalf of the Company, I, therefore, prepared a stipulation and receipt from Mr. Eaton, covering any claims which he might have, and this matter was then approved by Trimble & Braley and all that was left to be settled between us was the amount of costs which had been advanced by Messrs. Trimble & Braley and not determined in the record.

On the 5th day of August, upon my return, I went with Mr. Eaton to the Assignment Division of the Circuit Court of Jackson County and found that the mandate from the Supreme Court had been received and filed and the case reinstated on the docket under its old number 25346. I had the clerk of the court figure up the amount of unpaid costs, $41.55 and paid these and then with Mr. Eaton went before the court and had judgment entered upon the stipulation for the agreed sum of $12,580.41 and had receipt of satisfaction of the judgment acknowledged in open court and noted upon the record.

There remains, therefore, upon the records of the court in Jackson County, Missouri, nothing of the controversy between us but the cause is finally disposed of and stricken from the docket as a disposed of case.

The costs for which we asked judgment in the Supreme Court, namely: $366.00, as you know, retained in your hands to await the final determination by that court of our right to recover from Trimble and Braley these costs. I have requested the Clerk of the Supreme Court to advise me as soon as the motions which have been filed to assess these costs, have been disposed of and at that time we can decide, under the rulings of the court, where this sum of $366.00 will be paid, and when this is done the matter will be entirely cleared from our books.

In clearing the matter upon the records of the Circuit
249 Court I found that while we had paid to the Hon. R. E. Ball the sums taxed under the proceedings below in favor of him as Master, no receipt had ever been made in the Clerk's office and in order that no question could ever hereafter arise upon this matter, although the Clerk had, upon my producing Judge Ball's receipt, satisfied the judgment and given us a note of the satisfaction, I secured from Judge Ball an acknowledgment of the payment of the allowance to him in full, filed it with the court and had it pasted upon the margin of the record so that there is now upon the records of the Circuit Court of Jackson County, Missouri, the full and complete evidence that all liability against the Guardian Trust Company upon the claims of Trimble & Braley have been paid and satisfied in full.

The Surety Company upon our appeal bond have had the records inspected and have acknowledged themselves to be fully satisfied upon this question and our liability upon application for this bond has been satisfied and nothing now remains to be done except to await the action of the Supreme Court upon the sum retained in your hands.

I have felt, and now state to you, that I believe this was in all respects for the best interest of the Guardian Trust Company and that we should have been derelict in our duty to the company had we litigated further over the question of possibly recovering part of the costs expended by us, as in determining this we would, beyond question, have paid out in court costs, attorneys' fees and interest, sums considerably in excess of any sums we might have hoped to recover.

Yours very truly,

ECW/MW EDWARD C. WRIGHT."

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250 "In the Circuit Court of Jackson County, Missouri, To the June Term, 1912, at Kansas City.

J. McD. Trimble, and C. A. Braley, Plaintiffs,
No. ..... vs.
Guardian Trust Company, Defendant.

Acknowledgment of Satisfaction.

Know All Men By These Presents, that we, J. McD Trimble and C. A. Braley, formerly partners under the firm name and style of Trimble and Braley, have received and do hereby acknowledge to have received of Guardian Trust Company

defendant in the above entitled cause, full satisfaction, payment and accord for judgment rendered in the above entitled cause and of all causes of action connected therewith, and we and each of us do hereby ratify and confirm the action of the defendant in the above entitled cause, Guardian Trust Company, in paying the amount of said judgment to John A. Eaton, attorney for the plaintiff in said cause, and we, and each of us hereby specifically authorize the said John A. Eaton to enter up satisfaction of said judgment upon the margin of the record in the office of the Clerk of the Circuit Court of Jackson County, Missouri, for us and for himself as attorney, in said cause.

Dated this 31 day of July, A. D. 1912.

J. McD TRIMBLE,
C. A. BRALEY."

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction of said voucher on the grounds set forth in numbered paragraphs 1 to 7, inclusive, and nine and ten of their written satement of objections, and in support of said objections, said parties asked leave to offer evidence, documentary and oral, for the purpose of showing that the services covered by said voucher included services foreign to this litigation, and upon issues
on account of which costs as between solicitor
251 and client may not be taxed, if they may be taxed on
any issue, and were excessive. The written statement read into the record in connection with the objections to the voucher No. 146, covering Item No. 82, and as to the offer of proof in support of said objections referred also to said voucher No. 2954, covering Item No. 127. Said objections were by the Master overruled, and said offer of proof in support thereof was denied, to which rulings of the Master, said parties duly excepted.

Voucher No. 3035, covering Item No. 129, is a receipted statement from Gates & English to the Guardian Trust Company, dated Feb. 21, 1913, representing the payment of $7,500.00 on account for professional services rendered in the Cambria Steel Company vs. Guardian Trust Company cases.

Voucher No. 3035, covering Item No. 129, as a receipted statement from Haff, Meservey, German & Michaels to the Guardian Trust Company, dated Feb. 24, 1913, representing

a payment of $1,000.00 in full to date for additional services in attendance upon United States Court of Appeals at St. Louis, and in preparation of reply to the Guardian Trust Company to argument and brief on reargument of The Kansas City Southern Railway Company.

Voucher No. 3154, covering Item No. 130, is a receipted statement from Gates & English to the Guardian Trust Company, dated January 13, 1914, representing, among other items, the payment of $5,000.00 on account of professional services in the Belt litigation.

Voucher No. 3155, covering Item No. 131, is a receipted statement from Clephane & Clephane, Washington, D. C. to the Guardian Trust Company, dated April 9, 1914, representing the payment of $200.00 as a retainer fee and on account of filing motion in the United States Supreme Court in the case of Kansas City Southern Railway Company vs. Guardian Trust Company.

252 Voucher No. 3189, covering Item No. 132, is a receipted statement from Frederick W. Lehmann, St. Louis, Missouri, to the Guardian Trust Company, dated Nov. 10, 1914, representing a payment of $1,00.00 as a retainer fee in the case of Guardian Trust Company vs. Kansas City Southern Railway Company.

Voucher No. 3238, covering Item No. 133, is a receipted statement from Gates & English to the Guardian Trust Company, dated Nov. 9, 1915, representing, among other items, the payment of $5,000.00 on acocunt of services in the Cambria Steel Company case.

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction of the foregoing vouchers, No. 3034, 3035, 3154, 3155, 3189 and 3238, covering respectively, Items No. 128 to 133, inclusive, on the grounds set forth in numbered paragraphs 1 to 9, inclusive, in their written statement of objections. Said objections were by the Master overruled, to which ruling, said parties duly excepted.

Voucher No. 896, covering Item No. 134, is a receipted statement from F. W. Lehmann to the Guardian Trust Company, Henry C. Flower, Receiver, dated Dec. 2, 1917, representing the payment of $15,000.00 for balance in full settlement for legal services rendered to date paid under order of court made Nov. 24, 1917.

The Kansas City Southern Railway Company and Cambria Steel Company objected to the introduction in evidence of said voucher No. 896 on the grounds set forth in numbered paragraphs 1 to 10, inclusive, of their written statement of objections. Said objections were, by the Master, overruled, to which ruling said parties duly excepted.

Voucher No. 1203, covering Item No. 135, is a receipted statement from H. S. Mecartney to the Guardian Trust Company, Henry C. Flower, Receiver, dated May 6, 1918, representing, among other items, the payment of $135,013.56 in settlement of a judgment awarded H. S. Mecartney against the Guardian Trust Company in the Circuit Court of
253 Jackson County, Missouri.

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction in evidence of said voucher No. 1203 on the grounds set forth in numbered paragraphs 1 to 10, inclusive, of their written statement of objections. Said parties further objected to the introduction of said voucher and to any and all evidence in support of Item No. 135, being the Mecartney judgment for the further reasons:

1. The opinion of the Supreme Court in affirming said judgment is contrary in many particulars to the actual facts in the case and is based on a misunderstanding of the law and facts.

2. Admissions were made in said cause by Counsel for the Trust Company and its receiver in reference to claims made in said case which were not supported by the facts.

3. So much of the services as were rendered by the plaintiff in said action as pertain to the issues here involved were rendered under a contract by which the compensation of the plaintiff therein was fixed, which compensation was fully paid to him prior to the filing of said action.

In support of said objections, said parties asked leave to offer, in addition to other evidence, evidence showing the statements made in the pleadings or by the courts or by witnesses in said case of H. S. Mecarntey vs. Guardian Trust Company; and said parties read into the record, the written statement hereinbefore set forth in connection with the objections to the introduction of Voucher No. 769 covering Item No. 108 and the offer of proof in support of said objections, said written statement appearing at pages 4 to 11 hereof. Said objections were by the Master overruled, and said offer of

proof denied, to which rulings of the Master, said parties duly excepted.

254 Voucher No. 3371, covering Item No. 136, is a receipted statement from H. S. Mecartney to Henry C. Flower, Receiver of the Guardian Trust Company, dated Sept. 15, 1922, representing the payment of $47,000.00 as an allowance of attorneys' fees and advancements by the United States Circuit Court of Appeals. Attached to said voucher, is the following order:

Order.

"In the District Court of the United States for the Western Division of the Western District of Missouri.

Edward A. Shedd and Charles B. Shedd, et al., Complainants, No. 110. vs. In Equity.
Guardian Trust Company, Board of Trade Office Building Company, State Realty Company and John A. Prescott, et al., Defendants.

Harry S. Mecartney, Claimant.

Now this cause coming on to be heard upon the mandate of the Circuit Court of Appeals, 8th Circuit, filed herein Sept. 11, 1922, the claimant, Harry S. Mecartney, appearing by James A. Reed and J. G. L. Harvey, his attorneys, and the Receiver, Henry C. Flower, by Justin D. Bowersock, his attorney, and the Court having considered said mandate, and being fully advised in the premises.

It Is Now Ordered that said Receiver shall forthwith pay to said claimant, taking the usual receipt therefor, the sum of $37,500.00 allowed to him by said Circuit Court of Appeals for services rendered by him to the defendant Guardian Trust Company, as specified by him in his printed claim filed herein, with interest thereon at 6% per annum from May 12, 1919, to this date, and also the sum of $1,725.92 for disbursements and advances made by him in and about the rendition of said services, with interest thereon at 6% per annum from March 26, 1920, to this date, amounting in the aggregate to $47,000.00.

Sept. 15, 1922.

(Signed) ARBA S. VAN VALKENBURGH,
District Judge."

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction of said Voucher No. 3371, on the grounds set forth in numbered paragraphs 1 to 10, inclusive of their written statement of objections and further objected to the introduction of said voucher and to any and all evidence in support of said item No. 136, being the judgment in favor of H. S. Mecartney in the Federal Court for the following additional reasons:

(1) The services rendered by him in this litigation
255 after the final decree of June 25, 1910, were voluntary services. In support of this objection, we offer in evidence the following statement contained in 'Suggestions in Support of Petition for Leave', etc., purporting to be signed by Messrs. Newell H. Clapp and Enoch J. Price, but which statement was in fact the statement of H. S. Mecartney.

It is apparent from the volume of the record here that due diligence has been used to prepare this application. In fact, without Mr. Mecartney's aid—volunteered without compensation, it would scarcely have been possible to present it thus early. (Page 966 printed record in the United States Supreme Court in this cause.)

In this testimony on this subject Mr. Mecartney testified:

Q. I find that in the transcript that on January 20th, 1913, the following order was made: 'These cases came on to be heard and on motion of Edward S. Shedd, et al., petitioners for leave to file suggestions, etc. (reading same). Are those suggestions that are there referred to the same as Exhibit 117 which you have identified. A. They are.

Q. Pursuant to that order did you file these suggestions with the court?

A. I did. I did it pursuant to both these orders. (Pages 1415, 16 record in Mecartney case in state court).

(2) If it was Mr. Mecartney who presented in the Court of Appeals the contention that The Kansas City Southern Railway Company was liable for the debts of the Kansas City Suburban Belt Railroad Company, and that judgment should be entered against the Southern Company, the fact that such contention was not made by other counsel for the Trust Company in that case was because of the conduct of Mr. Mecartney as counsel for the Trust Company prior to that time in putting the issues in this case in such shape that his successors as counsel for the Trust Company in charge of the

litigation were led to believe that that issue could not
256 be presented in the Court of Appeals. In his argument before Judge McPherson against the application for the second injunction against the prosecution of the state court cases Mr. Mecartney, in speaking of the Trust Company's pleading with reference to the liability of the Southern Company said:

It is not an affirmative claim on our part to a personal judgment—we could not get judgment on it. But, as the pleadings stand, we are not seeking personal judgment against the Southern Company. In that case the Southern Company is a mere intervener (page 57 of the argument before Judge McPherson).

Said parties also asked leave to offer other evidence in support of said objections. Said objections were by the Master overruled, and said offer of proof denied, to which rulings of the Master, said parties duly excepted.

Voucher No. 3385, covering Item No. 137, is a receipted statement from George H. English, surviving partner of the firm of Gates & English, to Henry C. Flower, Receiver of the Guardian Trust Company, dated Oct. 27, 1922, representing an aggregate payment of $5,859.40, including the claim of Gates & English for attorneys' fees as finally allowed, of $4,609.59 and interest on the same to date, of $1,249.81. Attached to said voucher is the following order:

"Order.

In the District Court of the United States for the Western Division of the Western District of Missouri.

Shedd, et al., Complainants,
No. 110. vs.
Guardian Trust Company, et al., Defendants.

Now on this 23rd day of October, 1922, the above entitled
257 cause coming on to be heard upon the claim of Gates & English heretofore filed herein, and upon the report of Hon. Henry D. Ashley, Special Master, filed herein on October 15, 1918, and upon the exceptions filed thereto by the plaintiff and certain intervening petitioners, and upon the exceptions filed thereto by the claimants, Gates & English, George H. English, the surviving partner of said firm of Gates & English, appearing in person, the plaintiff and intervening petitioners by Jules C. Rosenberger, their solicitor, and the Receiver herein by Justin D. Bowersock, his solicitor,

and the Court having considered said report and heard the argument of counsel, and being fully advised in the premises,

It Is Now By The Court Considered, Adjudged And Decreed that said report be and it is hereby in all things confirmed; that said claim be allowed in the sum of $4,609.59, with interest at 6% per annum from April 20, 1918, and that the Receiver do forthwith pay out of the funds of the Guardian Trust Company in his hands to said George H. English, surviving partner, the sum of $5,859.40, taking proper receipt in full therefor.

(Signed) ARBA S. VAN VALKENBURGH,
District Judge."

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction in evidence of said voucher No. 3385 on the grounds set forth in numbered paragraphs 1 to 10, inclusive, of their written statement of objections. Said objections were, by the Master, overruled, to which ruling said parties duly excepted.

Voucher No. 2405, covering Item No. 165, is a receipted statement from John C. Bovard, to the Guardian Trust Company, dated Nov. 9, 1908, for $55.95, representing the cost of printing the brief filed with Judge Douglas in the Kansas City Southern Railway Company case and also the bried filed in the United States Circuit Court of Appeals.

The Kansas City Southern Railway Company and the
258 Cambria Steel Company objected to the introduction in evidence of the foregoing voucher on the grounds set forth in numbered paragraphs 1 to 7, inclusive, of their written statement of objections. Said objections were, by the Master, overruled, to which ruling, said parties duly excepted.

Vouchers No. 2755, 2763, 2774, 2846, 2867, 2868, 2997, 3037, 3039, 3061, 3083 and 3130, covering respectively Items No. 166 to 177, inclusive, and Voucher No. 3160 covering Items No. 178 and 179 are receipted statements from various printing firms in Kansas City, Missouri, to the Guardian Trust Company, representing the cost of printing briefs and opinions in the Guardian Trust Company, Cambria Steel Company, Kansas City Southern Railway Company litigation. Said vouchers are dated, respectively, April 25, 1911, May 8, 1911, May 31, 1911, Nov. 9, 1911, Dec. 22, 1911, Dec. 22, 1911, Nov. 19, 1912, Feb. 24, 1913, Feb. 24, 1913, May 8

1913, August 21, 1913, December 20, 1913 and May 14, 1914. The vouchers covering Items No. 166 to 171, inclusive, 173, 174 and 179 represent the cost of printing briefs and are in the following amounts, respectively: $24.60, $3.00, $10.00, $71.00, $42.45, $77.00, $77.40, $9.90, $9.00. The voucher covering Item No. 172, in the sum of $21.00, represents the cost of printing 100 copies of the opinion in the United States Circuit Court of Appeals in the cases of Central Improvement Company vs. Cambria Steel Company, and the Guardian Trust Company vs. Cambria Steel Company. Voucher covering Item No. 175, in the sum of $18.75, represents the cost of printing the opinion of the United States Supreme Court in the case of Northern Pacific Railway Company vs. Joseph H. Boyd. The voucher covering Item No. 177, in the sum of $35.00, represents the cost of printing 150 copies of the opinion in the cases of Central Improvement Company vs. Cambria Steel Company and Guardian Trust Company vs. Cambria Steel Company. The vouchers covering Items
259 No. 176 and 178, in the amounts of $6.30 and $19.80, respectively, represent the cost of printing pleadings filed in the cases of Guardian Trust Company vs. Cambria Steel Company and Kansas City Southern Railway Company vs. Guardian Trust Company.

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction in evidence of the foregoing vouchers covering Items No. 166 to 179, inclusive, on the grounds set forth in numbered paragraphs 1 to 8, inclusive, of their written statement of objections. Said objections were, by the Master, overruled, to which ruling said parties duly excepted.

Voucher No. 46, covering Item No. 180, is a receipted statement from S. B. Willey to F. M. Black, Receiver of the Guardian Trust Company, dated Dec. 31, 1900, for salary for the month of December, 1900, in the sum of $250.00.

The following numbered vouchers also represent salary paid by the Guardian Trust Company and its Receivers to S. B. Willey during the period from January 1, 1901 to December 1, 1904: 105, 133½, 147, 176, 190, 222, 240, 283, 294, 329, 331, 341, 365, 377, 416, 433, 458, 472, 499, 516, 545, 556, 586, 617, 643, 658, 693, 710, 744, 757, 791, 802, 828, 1, 23, 28, 55, 61, 80, 84, 106, 113, 179, 31, 51, 70, 101, 129, 143, 156, 169, 175, 192, 206, 229, 242, 262, 272, 293, 298, 315, 324, 342, 348, 365, 376, 390, 403, 430, 441, 458, 472, 488, 491, 509, 511, 528, 535, 554, 565, 582, 593, 612, 620, 632, 640, 655, 663, 682, 688,

713, 717 and 750. All of said vouchers are in substantially the same form as voucher No. 46, except as to dates and amounts. All of said vouchers, including Voucher No. 46, show in the aggregate, payments of $1,500.00 of salary to S. B. Willey by the Guardian Trust Company and its Receivers, from Dec. 1, 1900 to June 1, 1901, and total payments from June 1, 1901 to December 1, 1904, of $7,343.35, on the dates and for the respective periods shown in the account filed with the Master. It is admitted by the Kansas City South-
260 ern Railway Company and the Cambria Steel Company that the amounts stated in said Willey vouchers were paid to Mr. Willey at the date of said vouchers.

Voucher No. 20, covering Item No. 181, is a pay-roll of Missouri, Kansas and Texas Trust Company for the half month ending December 15, 1900, showing, among other items, the payment of $30.00 to Jennie L. Gott, stenographer, said pay-roll being approved by F. M. Black, Receiver. Attached to said voucher is a receipt, dated Dec. 15, 1900, from Jennie L. Gott, acknowledging receipt of $30.00 from F. M. Black, Receiver, in full for salary to date.

Vouchers No. 43, 94, 106, 745 and 749 also show payments of salary to Jennie L. Gott, by the Guardian Trust Company and its Receivers during the period from December 15, 1900 to December 1, 1904. Said vouchers, including Voucher No. 20, show, in the aggregate, a payment for salary by said company and its Receivers to said Jennie L. Gott of $360.00 from Dec. 1, 1900 to June 1, 1901, and of $2510.00 from June 1, 1901 to Dec. 1, 1904. Said vouchers numbered 43, 94, 106, 745 and 749 are in substantially the same form as voucher No. 20 insofar as they cover the salary paid to said Jennie L. Gott, except as to dates and amounts.

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction in evidence of the foregoing vouchers covering Items No. 180 and 181 on the grounds set forth in numbered paragraphs 1 to 5, inclusive, and 7 of their written statement of objections. Said objections were, by the Master, overruled, to which ruling said parties duly excepted.

Vouchers No. 958, 2479, 2686, 2807, 2951, 2958, 3076, 3084, 3173, 3196, 3227 and 3236 covering Items No. 200 and 202 to 210, inclusive, in the respective amounts of $5.00, $5.00, $175.00, $175.00, $175.00, $175.00, $112.50, $43.75 and $175.00, dated respectively Sept. 23, 1905, March 27,
261 1909, Sept. 1, 1910, Aug. 4, 1911, July 31, 1912, August 8, 1912, July 31, 1913, August 30, 1913, Aug. 27,

1914, Nov. 20, 1914, Aug. 31, 1915 and Nov. 5, 1915, are receipted statements to the Guardian Trust Company from various Surety Companies and their agents representing premiums paid on appeal bonds in the Cambria Steel Company-Kansas City Suburban Belt Railway Company-Kansas City Southern Railway Company-Guardian Trust Company litigation.

The vouchers covering Items No. 200 and 202 are premiums on bond for $500.00 for two years given on appeal from Judge Phillips' decision restraining the Guardian Trust Company from prosecuting its suit in the State Court against the Kansas City Southern Railway Company.

Vouchers covering Items No. 203 to 207, inclusive, and Item No. 210, represent the premiums for six years on the appeal bonds in the Central Improvement Company case and in the case of Guardian Trust Company vs. Cambria Steel Company.

The voucher covering Item No. 208, in the sum of $112.50, represents the premium for three years on the appeal bond in the case of Cambria Steel Company vs. The Kansas City Suburban Belt Railway Company. Attached to voucher No. 3196 covering said item, is the following letter:

"John R. Bland, President. Cash Capital $2,000,000 Geo. R. Callis, Secretary-Treasurer.

We will Bond You
Contract
Judicial
Fidelity
Casualty
United States Fidelity and Guaranty Company
Baltimore, Md.

Kansas City, Mo. Oct. 15, 1914.

Midland Valley Department
Lucas & Debout
Managers
104-5-6 R. A. Long Bldg.,
Phones: Bell 5555 Main
Home 4800 Main
Robert E. Ball & I. P. Ryland
Attorneys.

Re: Central Improvement Company.

Mr. Geo. H. English,
930 Scarritt Bldg., City.

Dear Sir:

As suggested by you I have taken up with Judge Ball
262 the matter of the Central Improvement Company in the case of the Cambria Steel Company vs. K. C. Su-

burban Railway Company, et al, and am advised by Judge Ball that bonds given in the U. S. Circuit Court of Appeals are still in force when the case is removed to the Supreme Court of the United States, and that it is impossible for us to terminate our liability until the case is finally settled.

I am enclosing herewith our bill covering three annual premiums of $37.50, two of which have been fully earned, and the third due since August 10th, 1914, which when paid will continue the bond in force until August 10, 1915. Should we be able to terminate our liability at any time before this date, there will be a return premium due covering the unexpired term of the last year.

I will thank you to present this bill to the proper parties and secure a check covering same.

Yours very truly,

MWL*MMM M. W. LUCAS, Mgr.

Voucher No. 3227, covering Item No. 209, represents a premium of $43.75 paid as premium on the bond in Cambria Steel Company vs. Kansas City Southern Railway Company.

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction of such of said vouchers as covered Items No. 200 and 202 on the grounds set forth in numbered paragraphs 1 to 7, inclusive, of their written statement of objections, and further objected to any and all evidence in support of Items 200 and 202, premiums on appeal bonds on appeals taken by the Trust Company from orders prior to the final decree of June 25, 1910, for the following additional reasons:

(1) Said appeals were taken by the Trust Company, which fact is conclusive evidence that there were reasonable grounds for the contentions made by the Southern Company on those issues.

(2) Said appeals were improvidently taken by the Trust Company.

263 (3) The costs of said appeals were taxed by the Court of Appeals and the District Court has no authority to retax the same or to tax other costs in addition to those taxed by the Court of Appeals.

Said parties objected to such of said vouchers as cover Items No. 208 to 210, inclusive, on the grounds set forth in

numbered paragraphs No. 1 to 8, inclusive, of their written statement of objections and further objected to any and all evidence in support of Items 203 to 210, inclusive, premiums on appeal bonds on appeals taken by the Trust Company and the Central Improvement Company from the final decree of June 25, 1910, for the following additional reasons:

(1) Said appeals were taken by the Trust Company and the Central Improvement Company, which fact is conclusive evidence that there were reasonable grounds for the contentions made by the Southern Company on the issues appealed from.

(2) The costs on said appeals were taxed by the Court of Appeals and by the Supreme Court and the District Court has no authority to retax the same or to tax other costs in addition to those costs taxed by the Court of Appeals and by the Supreme Court.

All of said objections were by the Master overruled, to which ruling said parties duly excepted.

Voucher No. 2327, covering Item No. 246, is a receipted statement from Gates, Sea & English to the Guardian Trust Company, dated March 6, 1908 for three copies of attorneys' arguments in the Cambria Steel Company vs. Guardian Trust Company, and is in the sum of $25.00.

Voucher No. 2329, covering Item No. 247, is a receipted statement from Lillian Rawson, to the Guardian Trust Company, dated May 6, 1908, representing the sum of $31.50, paid for services in making three copies of the arguments in the Belt suit.

264 Voucher No. 2786, covering Item No. 248, is a receipted statement from John I. Levin, to the Guardian Trust Company, dated June 29, 1911, representing the payment of $18.50, for reporting oral arguments in Central Improvement Company vs. Cambria Steel Company and Guardian Trust Company vs. Cambria Steel Company in the United States Circuit Court of Appeals.

Voucher No. 2821, covering Item No. 249, is a receipted statement from John I. Levin, to the Guardian Trust Company, dated Oct. 6, 1911, representing a payment of $36.70 for reporting services in the United States Circuit Court of Appeals in the cases of Central Improvement Company vs. Cambria Steel Company, and Guardian Trust Company vs. Cambria Steel Company.

Voucher No. 3038, covering Item No. 250, is a receipted statement from the Watson Law Reporting & Process Serving Company to the Guardian Trust Company, dated Feb. 24, 1913, representing the payment of $72.50 for stenographic services from Jan. 20, to Jan. 22, 1913, in the case of Guardian Trust Company vs. Cambria Steel Company.

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction of the foregoing vouchers covering Items No. 246 to 250, inclusive, on the grounds set forth in numbered paragraphs 1 to 7, inclusive, of their written statement of objections. Said objections were by the Master overruled, to which ruling, said parties duly excepted.

Voucher No. 2500, dated June 25, 1909, being a receipted statement from Edward P. Gates to the Guardian Trust Company, heretofore referred to as covering Item No. 120, also covered Items No. 412, 413 and 414. Item No. 412 represents a payment to said Edward P. Gates of $28.00, for the expense of a trip to St. Paul, Minnesota, and return, for attendance upon the United States Circuit Court of Appeals
in the case of Guardian Trust Company vs. Kansas
265 City Southern Railway Company.

Item No. 413 represents a payment of $60.00 covering the expense of a trip by Edward P. Gates and George H. English, Jr., to St. Louis, Missouri, on the first setting in the United States Circuit Court of Appeals in Guardian Trust Company vs. Kansas City Southern Railway Company.

Item No. 414 represents a payment of $65.00 covering the expense of a trip by Edward P. Gates and George H. English, Jr., to St. Louis, Missouri, to attend the hearing of Guardian Trust Company vs. Kansas City Southern Railway Company in the United States Circuit Court of Appeals.

Voucher No. 2773, covering Item No. 415, is a receipted statement from Gates & English to Guardian Trust Company, dated May 31, 1911, representing a payment of $105.50 for railroad fare and expense on the argument of the appeal from the final decree in Guardian Trust Company vs. Cambria Steel Company.

Voucher No. 2787, covering Item No. 416, is a receipted statement from Gates & English to the Guardian Trust Company, dated June 29, 1911, representing, among other items, the payment of $74.00 as expenses of Edward P. Gates and George H. English, Jr., to St. Paul and return to attend the

hearing in the motion of Shedd et al in the case of Guardian Trust Company vs. Cambria Steel Company.

Voucher No. 2881, being a receipted statement from Gates & English, to Guardian Trust Company, dated Jan. 16, 1912, heretofore referred to as covering Item No. 125, also covers Item No. 417, and as to such item, it represents the payment of $25.00 for expenses to St. Louis and return in attending the United States Circuit Court of Appeals for the oral argument in the Belt and Kansas City Southern cases.

Voucher No. 2884, being a receipted statement from
266 Haff, Meservey, German & Michaels, to the Guardian Trust Company, dated Jan. 18, 1912, heretofore referred to as covering Item No. 126, also covers Item No. 418 and as to such item, represents the payment of $1.87 for two telegrams in connection with the Cambria case and the payment of 50c as express on briefs to the Clerk of the Supreme Court.

Voucher No. 2998, being a receipted statement from Gates & English to the Guardian Trust Company, dated Nov. 19, 1912, heretofore referred to as covering Item No. 76, also covers Item No. 419, and as to such item, represents a payment of $50.00 for expenses of a trip to St. Louis and return, to inspect the opinion of the United States Circuit Court of Appeals.

Voucher No. 3007, covering Item No. 420, is a receipted statement from Haff, Meservey, German & Michaels to the Guardian Trust Company, dated Dec. 16, 1912, representing, among other items, the payment of 75c for telegrams in connection with the Cambria case.

Voucher No. 3025, covering Item No. 421, is a receipted statement from John A. Prescott & Company to the Guardian Trust Company, dated Jan. 31, 1913, representing, among other items, an advance payment of $146.05 for the expense of a trip to St. Louis by J. A. Prescott, E. P. Gates, George H. English, Jr., and D. J. Haff, to attend the hearing of the Belt case in the United States Circuit Court of Appeals.

Voucher No. 3036, covering Item No. 422, is a receipted statement from Gates & English to the Guardian Trust Company, dated Feb. 24, 1913, representing a payment of $18.00 for railroad fare and berths of Edward P. Gates and George H. English, Jr., to St. Louis.

Voucher No. 3131, covering Item No. 423, is a receipted statement from Gates & English to Guardian Trust Company,

dated Dec. 20, 1913, representing a payment of $50.00 for the expense of a trip to St. Louis and return to examine and make synopsis of opinion of United States Circuit of
267 Appeals in Guardian Trust Company vs. Kansas City Southern Railway Company.

Voucher No. 3162, covering Items No. 424, 425 and 426 is a receipted statement from Gates & English to the Guardian Trust Company, dated May 14, 1914. As regards Item No. 424, it represents the payment of $58.00 for expenses of a trip to St. Louis and return, made in January, 1914, in respect to perfecting the record and allowing appeal. As regards Item No. 425, said voucher represents a payment of $260.40 for expenses of a trip to Washington and return made in March, 1914, to examine the record in the Supreme Court and to engage local counsel. As regards Item No. 426, said voucher represents a payment of $252.00 for the expense of a trip to Washington in April, 1914, to submit motion to dismiss and resist application for certiorari and interventions.

Voucher No. 3238, being a receipted statement from Gates & English to the Guardian Trust Company, dated Nov. 9, 1915, heretofore referred to as covering Item No. 133, also covers Item No. 427. As to such item, it represents a payment of $54.00 on account of expenses incurred on a trip to St. Louis to consult with F. W. Lehmann with regard to preparing briefs in the Belt case.

Voucher No. 3249, covering Item No. 428, is a receipted statement from Prescott & Snider, to the Guardian Trust Company, dated Dec. 31, 1915, and represents, among other items, a payment of $9.58 for two berths and one fare to St. Louis for Messrs. Prescott & English and the payment of $2.10 for telegrams and the payment of $278.49 for expenses of J. A. Prescott to Washington and New York, in connection with the Belt case, and other matters; expenses of George H. English, Jr. to Washington and return for trial of Belt case; also part expenses of H. A. Lloyd and Frederick W. Lehmann to Washington on account of the Belt case.

Voucher No. 3250 also covering Item No. 428, is a receipted statement from George H. English, Jr., to the Guardian Trust Company, dated Jan. 11, 1916, representing a further payment of $10.00 for balance of expenses of trip to Washington, D. C. and return on account of the Belt cae.

268 The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction

in evidence of such of the foregoing vouchers as covered Items 412, to 414, inclusive, on the grounds set forth in numbered paragraphs 1 to 7, inclusive, of their written statement of objections, and objected to such of said vouchers as covered Items No. 415 to 428, inclusive, on the grounds set forth in numbered paragraphs 1 to 8, inclusive, of their written statement of objections. In support of their objections to said vouchers covering items 412 to 428, inclusive, said parties called attention of the Master to Item No. 428, expenses of Gates & English and others, to Washington, as showing that expenses foreign ot the issues here involved are included in said items. Said objections to the introduction of said vouchers were, by the Master, overruled, to which ruling said parties duly excepted.

Mr. Rosenberger: Mr. Leavens, I direct your attention to the following part of an order made by the Special Master in this case on Nov. 7, 1923, reading as follows:

"Ordered further that in the meantime the vouchers referred to and enumerated in said claim or demand, shall be lodged in the office of the Receiver of the Guardian Trust Company in the Fidelity Trust Building, Kansas City, Missouri, and shall, during the usual office hours of the Receiver, be open to the inspection of the Cambria Steel Company and of the Kansas City Southern Railway Company, by and through their solicitors and accountants."

You may state whether at all times since the date of that order, these vouchers have been lodged in the Receiver's office.

Mr. Leavens: They have been in my custody, in fact, they were lodged in the safety deposit vaults down in the Fidelity National Bank and Trust Company; they have been segregated from the general vouchers relating to other transactions of the Trust Company, and put together and
269 in their numerical order for convenient reference and have been inspected by Mr. Smith here and also by Mr. Jetmore and have been produced every time they have been called for.

On cross examination by Mr. Smith, Mr. Leavens testified in substance as follows:

"I do not know of my own knowledge, anything about the transactions represented by these vouchers prior to the time of my connection with the Receiver's office. That connection began Oct. 1, 1918. I now devote my time very largely to

the business of the Guardian Trust Company and have a lady in the office with me that does the same, and have had a lady assistant ever since I have been acting as assistant to the Receiver."

On redirect examination by Mr. Rosenberger, Mr. Leavens testified in substance, as follows:

"Since I have been in the Receiver's office, all the vouchers which have been issued and which I have identified and which have been introduced in evidence here, have been issued and kept in the regular course of business of the Receiver; and the vouchers introduced in evidence here show disbursements made by the Trust Company as shown by its books."

On recross examination by Mr. Smith, Mr. Leavens testified in substance as follows:

"Except possibly in one or two instances where I may have personal knowledge, I have no knowledge of any of the transactions represented by these vouchers except that I know that the money was paid out. I know nothing of what services were rendered in return for the payment except by hearsay."

Mr. Rosenberger thereupon offered in evidence, the title page of the appellant's abstract of the record in the Supreme Court of Missouri in the case of Mecartney vs. Guardian Trust Company, also the opening recitals of said ab-
270 stract of record appearing on page 1 thereof as follows:

"This action was begun in the Circuit Court of Jackson County, Missouri, at Kansas City, by the filing of a petition and issuing of summons on the 28th day of March, 1908. The petition was several times amended and the proceedings of the court in respect to said amendments, were preserved of record by a term bill of exceptions presented by the defendant to the court on the 99th day of the April, 1909, term of said court, the same being the 2nd day of Oct, 1909, which said term bill of exceptions was by the judge of said court signed, sealed, allowed and by the court ordered filed, and said bill of exceptions was on the said 2nd day of October, 1909, at said April, 1909 term of said court filed and made a part of the record in said cause, all as appears by record [and made a part of the record in said cause, all as appears by record] entry made at the time.

Said term bill of exceptions has been incorporated in and made a part of the final bill of exceptions filed in said court, as appears hereafter, to which reference is hereby made.

Further proceedings were had in said cause, which proceedings were preserved and made a part of the record in this cause by a bill of exceptions tendered by the defendant on the 75th day of the October, 1910 term of said court, the same being January 7th, 1911, and said bill of exceptions was by the judge of said court signed, sealed and allowed and was by the court ordered to be filed and made a part of the record of said cause, and said term bill of exceptions was on said 75th day of the said October, 1910 term duly filed and made a part of the record in said cause, all as appears by record entry made at the time."

Mr. Rosenberger also offered in evidence the amended petition and all exhibits referred to therein appearing on
271 pages 2 to 53, inclusive, of said abstract, also the amended answer in said suit appearing on pages 54 and 55, the reply at page 55 of said abstract, the order appointing the Referee appearing at page 56, the judgment of the Circuit Court appearing at page 57, and recitals appearing on pages 56 to 57, the modified judgment appearing in pages 58 and 59, and the proceedings appearing on page 59, and ending with the affidavit of appeal on page 61.

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction of any evidence in support of the Mecartney judgment on the grounds of their written statement of objections and for the following further reasons:

(1) The opinion of the Supreme Court permitting said judgment is contrary, in many particulars, to the actual facts of the case, and we was based on a misunderstanding of the law and the facts.

(2) Admissions were made in said cause by counsel for the Trust Company and its Receivers, in reference to claims made in said case which were not supported by the facts.

(3) So much of the services as were rendered by the plaintiff in said action as pertain to the issues here involved, were rendered under a contract by which compensation of the plaintiff therein was fixed, which compensation was fully paid to him prior to the filing of said action.

In support of these objections, said parties ask leave to offer in addition to other evidence, evidence showing the

statements made in the pleadings or by the courts or by witnesses in said case of Mecartney vs. Guardian Trust Company. The written statement read into the record in support of the objections to the introduction of Voucher 769 covering Item No. 108 apply also to this evidence.

Mr. Smith: If the Master, please, our written objection objects to this judgment as being rendered in a suit in which we were not parties and, therefore, it is not binding on us, and there is also included in that objection, the objection that the judgment covers services for which costs as between solicitor and client could not be taxed on any theory against us; it not only covers this suit but covers other litigations that is not a part of this litigation, and in addition to that we want to offer as part of our objection, certain extracts from the transcript of this record as showing that that judgment included issues on account of which costs are not properly taxable here.

The foregoing objections were, by the Master, overruled, and said offer of proof denied, to which ruling said parties duly excepted.

The Master: The Master had already formerly indicated he is not going to try the Mecartney cases. On the other hand, I think that if you could show to the satisfaction of the Master that specific amounts that were included in the Mecartney judgment were not matters referred to in the memorandum opinion, I think the burden is on you to show it, show the amount of it.

Mr. Smith: This judgment was recovered for services in gross and the amount that was allowed for services in any other litigation is not shown by any figure or statement in the record and the only way that we could show what those services were would be to retry those issues in which we have no interest, for the purpose of substracting that amount from the issue in which we have an interest, and I think that is not a proper way, or legal way, to put this evidence in.

Mr. Crane: Your Honor understands we object to the offer as not binding on the Southern Railway Company and the Cambria Steel Company, because neither of them were parties to that suit, nor were notified to appear and defend the suit; nor could any judgment rendered in the suit be considered as binding on or an obligation of the Southern
273 and Cambria Companies; and for those reasons, in addition to the other reasons stated in the formal writ-

ten objections, judgment rendered in that case cannot be binding on either [one] the Southern or Cambria Companies. And further upon the showing that we make that other items were sued for and included in that judgment we contend that the obligation is on the Receiver here to establish by evidence what charges of Mecartney's against the Guardian Trust Company were rendered that will apply to this case and what those services are.

Mr. Smith: And what part of them would apply to the issues in this case in which it is claimed costs may be taxed against these clients. Now, as Mr. Crane says, that is not taken as part of the written objections.

Mr. Crane: Do you want us now to point out in the record where Mecartney, himself, shows—

Mr. Rosenberger: (Interrupting) Oh no, I expect to show that myself when I get to it.

Mr. Crane: I was going to say, where Mecartney shows by his testimony he was suing for other items than those which apply in the matter which we have under consideration here.

The Master: In reference to what company, the Dock Company?

Mr. Crane: The Port Arthur Channel & Dock Company.

The Master: Weren't they parties to the reorganization of the Kansas City Southern?

Mr. Moore: I should say that they were; that is, when the reorganization was completed the Port Arthur Canal & Dock Company purchased the property of the old Port Arthur Channel & Dock Company and the Kansas City Southern Railway Company owns the stock of the Port Arthur Canal and Dock Company.

Mr. Smith: Now in addition to that there was litiga-
274 tion—

Mr. Rosenberger: (Interrupting) Well now, if the Master please, all these statements going into the record here are all part of their case. I expect to deal with this question and I would like to be able to put in my proof in some sort of uninterrupted way.

Mr. Smith: We want to make, in addition to our other objections, the objection to the introduction of so much of this record as an unnecessary encumbering of the record and should offer limited parts.

The Master: He is.

Mr. Smith: He is offering the whole petition in evidence.

Mr. Rosenberger. The whole petition, yes.

Mr. Smith: We object to all of it for the additional reason it is unnecessarily encumbering the record.

The Master: The objection is overruled.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and the Cambria Steel Company at the time duly excepted.

Mr. Smith: Now it may be understood this objection may be included in our objection taken before the Master?

The Master: Yes.

Mr. Rosenberger: Now I wasn't listening very attentively. Mr. Bowersock calls my attention to the fact you are offering some evidence in support of your objection. I object to that as not an orderly method of proceeding.

Mr. Smith: Why, certainly. Here you are offering the judgment in the case and the judgment is not admissible; the facts don't permit the judgment to be offered in this case and the only way I can make our objection is to point out in the evidence the reason why the judgment is not competent. You can't admit it and say it is competent and then have this evidence come in and take it out again.

275 The Master: What is the evidence?

Mr. Smith: It is from the same record as Mr. Rosenberger offered.

Mr. Rosenberger: We object to the introduction of any evidence by the Southern Company and the Cambria Company at this time.

Mr. Crane: Let us not get confused. He offers the petition. Now we call attention to the thing that is in his offer which shows it is not admissible here.

Mr. Rosenberger: That is argument. I offer the petition. The petition is all here for the consideration of the Master. If it is competent the Master will consider it.

Mr. Crane: We have to point out why it isn't competent.

Mr. Rosenberger: Point it out in the argument.

Mr. Crane: We object for the reason the petition in there shows certain things that make it not competent.

Mr. Bowersock: That objection is all right, but you don't need to offer any evidence on that, because the petition is already offered.

Mr. Crane: We have got to designate those portions of the petition that are not competent.

The Master: I think that is in the nature of argument and the objection should be sustained.

To which last action and ruling of the Master in sustaining the objection of the Guardian Trust Company, the Kansas City Southern Railway Company and Cambria Steel Company, at the time, by their counsel, duly excepted.

Thereupon, the Master overruled the objection to the introduction of the documents offered in evidence from the abstract of the record in the case of Harry S. Mecartney vs. Guardian Trust Company; to which action the said Southern Railway and Cambria Steel Companies at the time duly excepted.

276 Said documents, last above admitted in evidence by the Master, are in words and figures as follows, to-wit:

"Amended Petition.

Now comes the plaintiff, Harry S. Mecartney, who was named in said original petition as Henry S. Mecartney, a resident of Illinois, and by leave of court first had and obtained, files herein this, his amended petition, and for his several causes of action against the defendant states and alleges as hereinafter set forth in three several counts and in numbered paragraphs thereof as follows:

First Count

1. That plaintiff at the times hereinafter mentioned was and for over twenty years prior thereto had been, and still is, an attorney at law in good standing, duly licensed in Illinois and duly licensed to practice law in the federal courts, and engaged in active practice of the profession of law with headquarters in Chicago and resident in Illinois, and at times performing professional legal services at various other places in the United States.

2. That defendant, Guardian Trust Company, is, and at the times hereinafter mentioned, was, and for a long time prior thereto had been, a corporation organized and existing under the laws of the State of Missouri, as a Trust Company, having its principal office at Kansas City in said County of Jackson, empowered to execute trusts of various kinds, including railroad bond and other trusts, and to act as financial agent and trustee of various other individual and corporate enterprises, and as to all manner of real estate and personal property; and had for many years been engaged in the financing and furthering among others railroad enterprises and other enterprises closely allied thereto, and many other enterprises of large dimensions and of intricate and complex financial interests.

277 3. That on or about December 6, 1904, plaintiff was called to Kansas City from his office in Chicago by the defendant and requested, retained and employed by defendant to undertake to appear for and protect the interests and claims of defendant in a certain litigation then pending and known as the 'Belt Litigation', a cause or controversy of great and abnormal dimensions and complexity and involving very large financial interests. Said controversy had grown out of a series of transactions between said Trust Company on the one hand and a number of railroad companies on the other; that is to say, the Kansas City Suburban Belt Railroad Company (hereinafter called the 'Belt' Company), the Kansas City, Pittsburg & Gulf Railroad Company (hereinafter called the 'Gulf' Company), and the Port Arthur Channel & Dock Company (hereinafter called the Dock Company).

4. The said Belt Company owned and controlled what was known as the 'Belt System' at Kansas City, which was the terminal among others for the system of railroads owned and controlled by the 'Gulf' Company, extending from Kansas City to Port Arthur, Texas, at which latter point it connected with deep sea shipping by means of a dock terminal owned by said Dock Company.

The said Belt 'System' had been built in sections by various railroad companies, to-wit: The said Belt Company, The Consolidated Terminal Railroad Company, The Kansas City & Independence Air Line Company, and the Union Terminal Railroad Company; and the said Belt Company, some time prior to 1897, had consolidated with all said other companies and owned their stock and bonds, said other companies being herein called 'Constituent' companies of the Belt Company.

5. From the time the building of the Belt System was commenced in 1889, and from the time that the 'Gulf' 278 System was commenced in 1891, and from the time the Dock Company's enterprise was commenced about 1895, down to about April 1, 1900, the defendant had been the financial agent of such companies, and of all such "Constituent' Companies, selling their bonds and stock on commission, advancing them various moneys, taking from them various collateral, and paying out on their account various sums for construction purposes; looking after their construction contracts, collecting and disbursing interest and dividends upon their order and making all manner of disbursements for them.

6. As these various railroads, and particularly the 'Belt System', had been in process of construction, certain closely allied enterprises had come into being at various times, which had been furthered and financially backed by the Belt Company for the purpose of increasing its traffic, namely, The Missouri Elevator & Terminal Company, which had constructed and operated certain grain elevators; the Fairmount Amusement Company, which constructed and conducted a pleasure park; a certain land company, known as the Central Improvement Company (hereinafter called the Central Company), promoting land purchases and sales along the lines of the said Belt Railroad and the 'Gulf' Railroad principally in or near Kansas City; also the Second Street Improvement Company, a land company which had acquired title to certain lands along the line of the Belt Railroad in Kansas City.

7. In 1895, the Belt Company, with a view to acquiring a new terminal customer, had contracted with the Kansas City & Northern Connecting Railroad Company to build for the latter its ninety mile road, then in prospect, from Kansas City to Pattonsburg, the consideration therefor being the stock and bonds of the said Connecting Company. Defendant had been trustee under the mortgage securing the bonds of said Connecting Company, and had acted as the 279 agent for the sale of some of its bonds and also stock, and for the disbursement of the moneys thereby raised for the construction of said road. And a land company, known as the Northern Townsite Company, had been organized to further land purchases and sales along the line of said Northern Connecting Railroad and had so operated for several years prior to 1900, in which said Trust Company, by means of its relations to the Belt and Connecting

Companies, had acquired a large amount of stock. The said Elevator, Amusement, Central, Second Street, Northern Connecting and Townsite Companies were known in said cause and litigation as 'Subsidiary' companies.

8. On September 6, 1900, the Cambria Steel Company had filed a creditor's bill in the United States Circuit Court at Kansas City against the said Belt Company, seeking to have receivers appointed for said Belt Company, and to wind up its affairs, in which were recited the above facts in reference to the organization of said various railroad 'Subsidiary' companies, all of which were alleged to be insolvent, and their various operations and the transactions and dealings so had by them with defendant.

The Guardian Trust Company was made a party to said cause upon the ground as alleged that in the various dealings it had had with the Belt Company and with said 'Constituent' and 'Subsidiary' Companies the defendant had controlled and dominated said companies to its own advantage and profit, and had not truly accounted for moneys which it had collected and realized on through the various bonds and stock sales and from various other sources, and that it was liable to account to the Belt Company for all such moneys and transactions. It was also alleged that the defendant held about $350,000 of notes and an open account of about $43,000 against said Belt Company, which upon a true accounting would be wiped out and canceled. It was prayed that
280 defendant should be restrained and enjoined from disposing of said notes and account, and also from disposing of the various collateral which it held as security for said note and open account, stocks in the said subsidiary companies, and an assigned account of the Belt Company against the Gulf Company, also other stocks and bonds so held as collateral, which collateral securities were then worth from $250,000 to $400,000. It was also prayed that Receivers should be appointed for said 'Subsidiary' companies. Said bill also prayed that the receivers to be appointed for the Belt Company should be ordered and empowered to bring a bill for accounting against the Trust Company as to all of said various transactions.

A restraining order against the defendant as prayed for in said bill was at once issued. Receivers were at once appointed in said cause for the Belt Company and later and within the year next following the filing of said bill, receivers for said 'Subsidiary' companies were also appointed—with the exception of the Second Street Company—and the court

in said cause from time to time proceeded to administer the affairs of said companies through said receivers.

Said Cambria case was No. 2,468 of said United States Court.

9. On or about November 6, 1901, the said receivers of the Belt filed an ancillary bill against defendant and others seeking from defendant the accounting alleged in said Cambria cause to be due from it to said Belt Company. The bill of complaint was exceedingly long and covered many transactions of great magnitude, the bond issues of the Belt Company of $1,000,000 and others of $300,000, $500,000 and $2,000,000, respectively, issued by the various companies, which had consolidated with the Belt Company as above stated; and an accounting was sought as to all these and as to various stock issues of said companies, and as to all the proceeds realised thereon from time to time and dis-
281 bursed by the defendant on account of these various companies, and as to all the transactions ever had between said defendant and said Belt Company, and with each and all of said 'Constituent' and 'Subsidiary' companies.

Defendant was also charged with having appropiated to its own use from time to time upwards of $500,000 of other moneys of the Belt Company for which it had not truly accounted.

Said ancillary bill was No. 2,616 of said United States Court, and was an adjunct to the said Cambria cause, and the said joint or double cause thereafter proceeded as one cause and became known as the 'Belt Accounting Case', and is referred to herein as such.

10. It was also claimed in said ancillary cause that the notes and account held by defendants against the Belt Company, then amounting with interest to upwards of $400,000, should be canceled, that all of the collateral held as security to said claims should be surrendered, and that the lands held by the Central Improvement Company of a value of upwards of $200,000 (and nearly all of the stock of which company defendant held as collateral security as aforesaid), should be held to be the property of the Belt Company; and it was prayed that a full accounting be had between said Belt Company and defendant as to all of the transactions with said Belt Company for about eleven years, and with all said 'Constitutent' companies and said 'Subsidiary' companies covering the greater portion of said time.

Said bill demanded a full accounting as to transactions of upwards of $8,000,000 and claimed that defendant owed the Belt Company more than enough to wipe out the entire assets of said Trust Company, then amounting to upwards of $2,000,000.

11. A full answer to said ancillary bill had been filed about December 9, 1901, and later on April 1, 1902, by said stipulation an order had been entered in said cause
282 referring the issues of said Cambria and ancillary bills to Hon. Shannon C. Douglas as special master, to take the evidence therein and to make a report of his conclusions of fact and law thereupon. Testimony had been taken in said cause from time to time, so that by the time plaintiff was employed to take charge of the case as hereinafter stated, there had been 8,260 pages of evidence taken or thereabouts.

12. Thereupon, and on or about December 6, 1904, plaintiff was employed and retained by defendant in the place of the former counsel for defendant to undertake said cause in its behalf and to protect its interests therein and to prosecute its claims and defenses therein and thereto. Plaintiff immediately and on or about December 12, 1904, and at the special instance and request of defendant, entered his appearance in said cause along with that of one Jules C. Rosenberger, a practicing attorney at Kansas City, duly licensed to practice law in the state and federal courts there held whom he chose as his assistant, as attorneys for the defendant in said litigation; and from said time until the 27th day of March, 1908, he and his said assistant counsel on his behalf continued to act for and prosecute the claims of and defend against the claims made against said defendant Trust Company therein, and did at various times perform and render to the said defendant the professional services as hereinafter detailed.

Shortly after said retainer of plaintiff the said ancillary bill of complaint was amended so as to specifically challenge some eighty-five different transactions between said defendant and said various companies aggregating about $8,000,000 of transactions and making specific claims as to net balances against said defendant of over $1,400,000.00.

Shortly after said retainer of plaintiff the said accounting case proceeded in the way of taking evidence from
283 time to time and an enormous amount of testimony was taken therein as to said various and complex

transactions, so that by the time the evidence was closed therein on or about December 31, 1905, the [complaints] in said cause and the Southern Company as intervener therein had taken about 30,000 pages of evidence, and there were about 5,000 pages of the same which had been taken on behalf of defendant. The said cause was argued before said master in July, 1906, and the issues were then submitted to him and taken under advisement, and the same remained undisposed of at the time the employment of plaintiff in said 'Belt Litigation' ended as hereinafter shown.

12a. After plaintiff had been so retained and employed in said Belt Litigation and during the progress of the professional work which he performed therein as hereinafter shown, there were several other court cases and controversies in their issues of law or fact grew out of some of the issues involved therein or closely related thereto, in which cases and controversies plaintiff rendered various legal services, which became part and parcel of the one retainer and employment of plaintiff known as the 'Belt Litigation,' which said cases and controversies were as follows: viz:

(1) An Intervening Petition which was filed February 28, 1905, by the Southern Company in said 'Accounting Case' in which the intervener claimed as a purchaser of the Belt Company's assets and under what is known as the 'after acquired property clause' in the foreclosed mortgages of the Belt System, the right to and ownership of all the securities which the defendant then held as collateral to its said notes and open account against the Belt Company; and in which by an amendment the intervener as a holder of a deficiency decree against the Union Terminal Railroad Company made a personal or money claim against defendant on account of an alleged breach of trust as trustee in the mortgage of said Union Company, which said claim amounted to about $1,000,000.

28d After the filing of said intervening petition the issues therein were also referred to said Douglass as master and the same were heard together with the issues in said 'Accounting Case' and became a part of the same and were submitted to said master at the same time, and at the time that plaintiff's employment in said Belt Litigation ended as hereinafter stated, the same were undisposed of.

(2) Cases No. 23,066, 23,408 and 28,277 in the Circuit Court of Jackson County, Missouri.

In the first of which cases, commenced March 15, 1905, defendant sought as plaintiff therein to recover of the said Southern Company as an alleged successor by consolidation of the Belt Company the amount of the notes and open account which defendant had against said Belt Company, then amounting to about $500,000 and which were involved in said 'Accounting Case';

In the second of which cases, commenced on or about March 15, 1905, the defendant sought as plaintiff therein to recover of the Southern Company upon the same ground or basis about $38,000 by reason of defendant having paid the same to the First National Bank of Kansas City as endorser or joint maker of a note given for the benefit of said Belt Company;

And in the third of which cases, commenced July 2, 1906, defendant as plaintiff therein asserted claims of about $30,000 against said Southern Company as the successor by consolidation of the Gulf Company on notes and open account.

Said three cases above became known as the three 'State Court Cases' and are so referred to herein.

At the time that plaintiff's employment in said Belt Litigation ended as hereinafter stated, various demurrers and motions in such proceedings had been overruled by the court and answers had been filed therein and the said causes and
285 each of them were then pending on petition and answer and remained undisposed of.

(3) A supplemental bill filed by the Southern Company on July 3, 1905, in the consolidated case of the Provident Life and Trust Company against said Belt Company and said 'Constituent' companies, case No. 2464 in said United States Circuit Court, in which supplemental bill the Southern Company as a purchaser under the mortgages of the 'Belt System' sought to enjoin the prosecution by defendant of the first two of said three 'State Court Cases.'

A temporary injunction having issued therein on or about August 30, 1905, said issue was appealed by defendant to the United States Circuit Court of Appeals for the Eighth Circuit, which on or about May 31, 1906, reversed the said order and the injunction was thereupon dissolved. At the time plaintiff's employment in said 'Belt Litigation' ended as hereinafter stated, the said supplmental bill was pending upon demurrer and a motion to assess damages on behalf of de-

fendant for wrongful issuance of the said injunction, which remained undisposed of.

(4) A supplemental bill filed on or about November 16, 1907, jointly by the Belt Company and the Southern Company in said 'Accounting Case' and against defendant, to restrain defendant from prosecuting said three State Court cases, in which a temporary injunction was granted on or about February 22, 1908. An appeal was perfected from said order to said United States Court of Appeals on behalf of the defendant, and the record forthwith fully made up and filed in said Court of Appeals on or about March 26, 1908, and the said matter thus remained undisposed of when said employment of plaintiff ended as hereinafter stated.

13. At the time of plaintiff's retainer and employment as aforesaid, there was another branch of the controversy known as the 'Belt Litigation' and pending in the United States Circuit Court held at Beaumont, Texas, and covered by said employment as follows:

286 A consolidated case known as Nos. 10 and 11 in equity, of the December, 1904, Term of the said United States Circuit Court. In one of said cases the Provident Life & Trust Company as trustee was complainant, and the said defendant Guardian Trust Company was defendant, and said complainant as trustee for bondholders of the Port Arthur Channel & Dock Company claimed among other things that said Guardian Trust Company as an alleged subscriber to the capital stock of the said Dock Company was liable to the complainant for a deficiency decree against the Channel & Dock Company then amounting with interest to upwards of $1,500,000; secondly that it had dominated the Dock Company in reference to the various dealings in reference to the sale of bonds and stock issues, construction contracts and various other transactions, and that defendant was also liable to the Dock Company for said sum upon the said second ground of complaint.

14. In the other of said two causes the Barnett & Record Company, a judgment creditor of said Dock Company, was complainant and made similar claims to those last stated against said Guardian Trust Company, which was among the other parties made defendant; and the said Dock Company was a party defendant thereto and made similar claims to those last stated against said Guardian Company. In the aforesaid two causes the said Guardian Company asserted claims against the said Dock Company for the

amount of about $27,000. Prior to said December 6, 1904, certain proceedings had been had in said consolidated cause, various pleadings filed therein and about 4,000 pages of evidence had been taken.

That thereupon at the special instance and request of the defendant, plaintiff entered his appearance in said cause and the appearance of one Clifford Histed, Esq., a practicing lawyer of Kansas City, duly licensed to practice law in the said United States Court, as counsel for the defendant, and proceeded to prosecute its defenses and its claims in said cause and to protect its interests in said Texas case.

287 15. Thereupon, and between said December 6, 1904, and April 10, 1905, and at various dates and times during said period which plaintiff cannot more particularly specify than is specified in the following itemized schedule, plaintiff and his said assistant counsel in his behalf at the special instance and request of defendant rendered professional legal services to defendant therein, which services so performed and rendered by plaintiff are itemized in the following 'Schedule A'.

'Schedule A'

Being a Schedule of Services of Plaintiff in said Texas Case.

In December, 1904.

(1) Plaintiff made a stipulation to pass the case at the December term, and had same continued December 10.

(2) He examined the various pleadings, bills, cross-bills, answers, and intervening petitions in said cause, amounting to over 200 typewritten pages.

(3) About December 10, he retained Clifford Histed, of Kansas City, as assistant counsel in said cause, and had appearance of himself and assistant entered as counsel for defendant on or about December 21.

(4) He looked up the law of the issues therein, and prepared to make a motion to recall certain orders and sustain the demurrers and exceptions filed therein by the defendant.

(5) He looked up a prior decree of foreclosure which had been entered in said cause, and conferred with officers of defendant as to entry of a decree of sale of the Port Arthur and Town Site Company, same being finally entered by consent

with agreement as to 'upset price' of $100,000; decree entered December 21.

In the year 1905.

(60) He ordered and received from the clerk, January 21, a full memo, of all orders entered in said cause, and all
288 papers filed therein, and studied up said records, the same consisting of 312 minutes of orders and filings.

(7) He passed upon a form of resignation of said defendant as trustee in certain railroad mortgages involved in said suit, and upon an order of court making substitution of another trustee, in January and February.

(8) He had said assistant, Histed, make an abstract of the record of testimony and exhibits therein, a total of about 4,000 pages, said abstract being about 128 type pages, in January, February and March.

(9) Plaintiff and his said associates, prepared for a hearing of said cause at the April, 1905 term, looked up law, and prepared digest, brief of issues, and served notice of the hearing on March 22.

(10) Took up about March 20 negotiations for a compromise with Mr. Moore, counsel for opposition, Mr. Harris, president of defendant, Mr. Histed and others, and had negotiations for same extending over about ten days' time. Drew and re-new various propositions and settlement papers as negotiations proceeded; met Executive Committee of defendant in respect to settlement, made report to them, and had papers signed and settlement consummated on April 4, 1905.

In and about the performance of said services in said Texas case plaintiff incurred a reasonable expense for local and associate counsel therein of upwards of $1,300.

Said settlement as made was an almost completely successful outcome of the litigation for the Guardian Trust Company, having been made upon the following basis, viz:

The said Dock Company and the said Provident Company released the defendant from their said claim of over $1,500,000. The defendant released its claim against the said Dock Company of above $27,000, and also released other
289 claims of the value of about $2,000 and paid certain costs amounting to $500.

And plaintiff is unable to more particularly specify the services so rendered or to more particularly specify the dates or

times when said services were rendered than is set forth hereinabove.

16. Between said December 6, 1904, and March 27, 1908, and at various dates and times during said period which plaintiff cannot more particularly specify than is specified in the following itemized schedule, plaintiff and his said assistant counsel and other assistant counsel employed by him on his behalf and acting in conjunction with plaintiff under his direction and supervision, at the special instance and request of defendant rendered professional legal services to defendant in and about said cause or cotroversy, known as the said 'Accounting Case', and in and about said injunction suits and said 'State Court Cases' which schedule of services so rendered by plaintiff with the dates upon or the periods within which the same were respectively performed or when completed, are itemized in the following 'Schedule B':

In the following schedule the year in which the said servivces were respectively performed is shown in chronological order; where a month is referred to without the year being given, said months fall within and is referrable to the year next preceding the item and shown in italics:

'Schedule B'

Being a Schedule of Services of Plaintiff in said 'Accounting Case,' in said Injunction Suits, and in said 'State Court Cases.

In December, 1904.

(1) Plaintiff examined the evidence heretofore taken in said 'Accounting Case' and the files and records therein and made a short skeleton abstract of said bill.

(2) He consulted from time to time with the officers of defendant and with Messrs. Hagerman, Lucas and Moore, counsel for the opposition, in reference to procedure and
290 having testimony closed, and consulted with former counsel of defendant in the cause, in reference to the history of the case and its then status.

(3) Made inquires as to suitable local counsel, and then retained J. C. Rosenberger about December 12 as assistant local counsel.

(4) He prepared motion for closing the proofs in the case, served same on opposing counsel, appeared at three different sittings before Master, and argued for entry of rule,

and on December 30 obtained rule on complainants to close proofs by March 15.

In the year 1905.

(5) He prepared a trial brief in reference to practice, completed January 14.

(6) Prepared motions in reference to abbreviating the taking of testimony, and appeared before Master and argued said motions on February 2, which motions were overruled, and a rule was entered on complainant to file specifications of items of account objected to, February 3.

(7) Obtained order for defendant to be allowed examination of books and papers of Belt and Southern Companies, February 4.

(8) Drew and signed stipulation to use in this case the testimony taken in the Dock Company case pending at Beaumont, Texas, February 4.

(9) Made efforts to bring about arbitration or possible compromise of the case with counsel for opposition, in January and February.

(10) Examined the Reorganization Plan of the Southern Company; looked up law with reference to liability of Southern Company, and, with the aid of plaintiff's office assistants, Brown and Price, prepared preliminary type briefs thereon, made digests of cases, and completed first printed briefs on said issue, January 15 to June 8.

(11) Examined interevening petition of Southern Company filed February 27, and drew answer thereto.

291 (12) Drew first printed cross-bill against Southern Company and argued before Judge Phillips in chambers for leave to file the same.

(13) Had assistant Brown at Kansas City for about fifteen days, March 12 to March 29, examining books and records of the Belt Railroad mortgages, and foreclosure decrees, making abstracts thereof and aiding assistant Rosenberger upon the hearing.

(14) Drew petition for filing suit in Jackson County Circuit Court against the Southern Company upon the notes and open accounts originally held by defendant against the Belt Company, amounting to over $500,000, said petition consisting of 33 counts; and commencing suit March 15, 1905 (Case No. 23,066.)

(15) Drew similar petitions in case between same parties in same court, 3 counts, upon an original claim of about $38,000 against the Belt Company, known as the '1st National Bank Claim' commencing suit March 15, 1905 (Case No. 23,408).

In said 'Accounting Case'.

(16) Examination of Amended Printed Intervening Petition served on plaintiff about April 1; drew printed answer thereto, completed about May 15.

(17) Examining printed amended and supplemental ancillary bill filed March 22, containing 85 specific items of complaint as to various transactions, claiming a net balance thereon from defendant of over $1,400,000; and making abstract thereof, May 1, to 20.

(18) Drew, revised and completed printed answer to ancillary bill and to each item therein (118 pp), answer filed June 1.

(19) Examined exceptions of Southern Company to defendant's answer to intervening petition, filed June 5, and making preparation to argue them in court on notice received therefor.

(20) Negotiations for compromise of the said controversy, from January to June 13, and making complete proffer of compromise on said date, same being rejected.

(21) From time to time from January 1 to August 1, made four different 'digest briefs' (type), and com-
292 pleted on or about said date for the first printed brief upon the merits of the ancillary bill.

(22) Made up type brief on question of having attorney's fees taxed as costs in said case; same completed in November.

(23) From February 1 to July 1, at various times, argued against motions of opposition made before Master for inspection of books, and opposed motions for extension of time for complainant to close proofs; made requests of and motions before Master to order complainants' proofs closed.

(24) Prepared for appeal to court from rulings of Master thereon; gave notice of the same, and appeared in court and argued the same, and made cross-motion to have proofs declared closed June 7 (no order entered).

(25) Appeared before master upon taking of testimony by complainants from about February 1 to July 10, when complainants rested their case, testimony taken during said period amounting to about 20,000 pages.

(26) Looked up supplemental bill filed in Provident Life cases on July 3, 1905—same being consolidated cause No. 2,464 of U. S. Circuit Court, and prepared to resist application for injunction against the said two 'State Court Cases', and appeared in court and argued said issue on or about June 10.

(27) Examined brief of opposition on injunction issue, prepared printed brief in reply, same completed about July 26.

(28) A temporary injunction having been issued in said cause on or about August 29—gave notice of appeal by defendant therein, prepared assignments of error, and made up praecipe of record for the clerk; prepared and had filed appeal bond, and completed make-up of record, same being about 1,000 pages.

(29) Filed record in the U. S. Court of Appeals for Eighth Circuit, September 29 (Case No. 2,329) and prepared, revised and completed briefs in said cause, and filed same on or about December 1.

293 In said Accounting Case.

(30) Prepared for taking evidence on the part of defendants therein, and commenced the same on or about July 12, and continued the same until on or about November 28, when defendant rested his case.

(31) Took rebuttal evidence, and took depositions in Detroit and New York, evidence in the whole case being closed on or about December 31, 1905, the record then amounting to 34,614 pages.

(32) Prepared printed brief on the 85 'Item Complaints' of ancillary bill—Completed in December.

(33) Examined voting trust agreement in reorganization plan of Southern Company; examined marked reports and stock exchange list, and the foreclosure cases of the railroads of the Gulf, Belt and the said 'Constituent' companies, and collecting other evidence bearing upon the consolidation issue.

(34) Made up a supplemental brief upon the consolidation issue and also letter suggestions to John G. Johnson, Esq., of Phila., and C. O. Tichenor, Esq., of Kansas City, counselor, of law, and obtaining favorable report from letter on said issue.

In the year 1906.

(35) Examined brief of opposition on injunction issue in Court of Appeals and prepared reply brief therein; prepared for oral argument at St. Louis in said cause, spent five days there in preparation and argument of same—argument completed January 12.

(36) Said Court of Appeals, on or about May 13, reversed said order of injunction; and plaintiff thereafter prepared and filed demurrer to supplemental bill in cause, and motion to set aside order in said Circuit Court, gave notice and prepared memo brief on right to recover attorney's fees therein—completed about September 18.

In said Accounting Case.

(37) Collected reports and data, with a view of mak-
294 ing requests for change of venue from Judge Phillips—same completed about February 15—(the said work having commenced on or about November 1, 1905.)

(38) Abstracting thirty-four volumes of testimony in said cause and about 20,000 pages thereof taken before the Master by complainants,—same being completed about March 1 (said work having been commenced about December 15, 1904, and continued at various times to said last named date).

(39) Abstracting testimony of defendant in said cause, made up 'statistics of record', completed about July 1.

(40) Examined draft of new and second amended and supplemental ancillary bill; drew printed answer and plea thereof and filed same on July 2.

(41) Prepared second draft of printed cross-bill after evidence had been closed, same completed about April 15.

(42) Prepared 38 page typewritten affidavit in respect to the issues and facts as basis for motion to recall the reference, completed about April 17.

(43) Prepared type brief upon the right of defendant to file cross-bill in said case, completed about May 15.

(44) Prepared printed brief upon the issues of the intervening petition of Southern Company, completed about June 1.

(45) Made efforts from time to time, from January 1st to July 5th, to have the case set for argument before Master, and appeared before him at various times, arguing against motions of opposition to have cause set over, same being finally set peremptorily for argument on July 5th.

(46) Conferred with Executive Committee on May 17 and 18, in regular meeting assembled and with sub-committee appointed to negotiate a settlement of said cause, and prepared at various times data for use of said sub-committee; attended conference of the same in New York and prepared final printed letter in respect to said negotiations; such work
295 causing an almost continuous service of plaintiff from May 9 to June 21.

(47) July 1st to 18th prepared for and attended hearing, and made argument before Master, the hearing lasting about 11½ days.

(48) Prepared draft of petition for filing suit in Jackson County Circuit Court by defendant against Southern Company upon notes and open account, which defendant originally held against the Gulf Company, amounting to about $30,000.00 (12 counts); commenced suit July 2, 1906, Case No. 28,277.

In said Accounting Case.

(49) Examined full notes of oral argument (438 pages) and corrected notes of argument made on behalf of defendants from September 18 to December 1.

(50) Made up by assistant Rosenberger memorandum brief in ancillary cause, labeled 'Points and Authorities,' completed about December 1.

In the year 1907.

(51) Plaintiff prepared printed 'Supplemental Brief' in said 'Accounting Case' completed about March 10.

(52) Prepared printed 'Suggestions for Plaintiff' in said three 'State Court Cases.'

(53) April 1 to July 1, prepared to push the three State Court Cases to trial, giving notice to call up demurrers therein, appeared in court several times, having May 18 set for hearing demurrers.

(54) Appearing in court on said day and having demurrers overruled; examining answers filed in each case about three days later; drawing and filing reply to said answers; appearing in court on motion of opposition to stay proceedings, filed May 28, preparing for and resisting said motion; same being overruled.

(55) Preparing motion to strike out pleas; preparing motion to set causes for trial and advance the same; preparing printed suggestions thereof and letter suggestions for the judges in respect hereto; arguing motion to set and ad-
296 vance cases in court, same being overruled.

(56) On or about June 22, prepared and served notice on opposition to file any proposed amendment to answer in said cases within 30 days.

(57) Appeared in court by Rosenberger and had said Court Cases set for trial December 20, 1907.

(58) Made further memo, brief upon law of damages and attorney's fees in the injunction issue in Provident Life Case, and had negotiations with counsel for opposition in respect settling such claim, and drew and filed suggestion of damages therein.

In said Accounting Case.

(59) Prepared and completed final brief on consolidation issue, having same printed—type held some weeks and brief revised and reprinted about June 13.

(60) Conference with Charles H. Aldrich, Esq., counsellor at law, in Chicago submitting briefs of the case to him and obtaining verbal opinion from him on same for use in said 'State Court Cases', and also for Executive Committee of defendant.

(61) Examining brief of opposition in 'Accounting Case' (over 500 pages); also their brief on Intervention Issues (10 pages); and their further brief on Consolidation Issue, received July 27.

(62) Resisting Motion of opposition made before Master to change the record and to file additional books and minutes in June.

(63) Made schedule of portions of record after certain items for use of Master and as called for by him; completed before September 1, 1907.

(64) Prepared by assistant Rosenberger, second printed brief on intervention issues, completed about September 3d.

(65) Prepared data for James C. Jones, Esq., counsel at law, at St. Louis, in reference to appeal to United States Circuit Judges for special appointment of Judge to hear 'Accounting Case', and one day's conference with him and assistant Rosenberger at St. Louis, about November 26.

297 (66) Received notice of restraining order issued by Judge McPherson on November 16, 1907, based upon Supplemental Bill filed in said cause by Belt and Southern Companies jointly, restraining prosecution of the three 'State Court Cases'.

(67) Looked up orders in the case, received and examined copy of supplemental bill, drew demurrer to the same, and filed same November 27.

(68) Drew, revised and printed answer to rule to show cause why injunction should not issue therein, filed same December 16; drew and printed suggestions in support of said answer and in opposition to said rule; drew and presented affidavits in opposition to said rule.

(69) Prepared for oral argument to show cause therein and made arguments December 16 and 17 on same; attended later before Judge with reference to settling form of order as to answers and affidavits.

(70) Examined notes of oral argument and cases cited therein and examined brief of opposition on same.

(71) An injunction having been issued by said Judge about February 17, 1908, drew and filed motion on or about Feb. 29 to increase bonds on same for $10,000 to $1,000,000; investigated value of defendant's collateral security and the market values of stocks and bonds of Southern Company and drew affidavits in respect thereto for use on said motion.

(72) Made arguments upon motion to increase bonds in open court; motion denied, and petition therein stricken from files Feb. 29; redrew petition and suggestions in support thereof, gave notice and presented motion in open court, court refused to hear same, March 14.

(73) Prepared notice of and prayer for appeal from the said injunction and assignment of error therefor; prepared and filed special bonds and had appeal allowed and bond approved about March 10; prepared praecipe of record for clerk

(65 items), and furnished copy of records to clerk, obtained certified record (about 1,000 pages) and filed same in
298 United States Court of Appeals on or about March 26th.

In the year 1908.

(74) Had completed minutes of records made in Provident Life case and in said 'Accounting Case'—the former being 217 minutes of orders and filing and the latter 340 minutes of same, brought down to about December 17, 1907; and examined same in February and March.

(75) January 1st to March 25; Looked up testimony taken on original restraining order in 'Accounting Case', prepared motion to dissolve said order, and alternative motion for hearing on temporary injunction issue, and motion to increase bond; prepared notice thereof, served the same on opposition counsel and conferred with judge with reference to having same heard in court.

(76) Looked up various orders made in the cause as to Central improvement property which had been made without notice to plaintiff as counsel in the case; made further search of records and files and investigated further the values of said Central Company's lands covered by said orders; made minutes in detail of said orders and petitions on which same were based, and investigated facts with reference thereto; from February 15 to March 20.

(77) Prepared two printed affidavits as to the history of 'Accounting Case', (the first embodying former typewritten affidavit of 38 pages), changing and revising the same from time to time to correspond with developments in the case, completing same about March 13, 1908, first affidavit being 50 pages and second affidavit 25 pages.

(78) From time to time prepared personal messages to various parties concerned in said cause, including Messrs. Prescott, the defendant, and Samuel W. Moore, Esq., counsel for the opposition, Judge John F. Phillips, Judge of United States District Court at Kansas City, Master Shannon C. Douglas, Samuel Untermeyer, General Counsel of Southern Company, and the Executive Committee and Directors
299 of said Southern Company, with reference to bringing the case to an end; said work commenced about November 1st, 1907, and was completed about March 21st, 1908 (about 100 type pages).

(79) Took up criticism and protests of Prescott, Secretary of defendant, of date March 4, 1908, in reference to proceedings theretofore had in the said litigation, and as to the future policy therein; prepared reply thereto and transmitted copy thereof to Executive Committee; prepared for special meeting of Executive Committee on March 26, upon request of the President; attended open Committee meeting at Kansas City, and received notice of plaintiff's discharge as counsel for said defendants' case, on March 27, 1908.

(80) During the progress of said 'Belt Litigation' plaintiff rendered various reports to the President and Executive Committee of defendant, reporting the progress of the same, said reports being made on December 21, 1904, February 3 and 17, May 5 and October 25, 1905; January 26, May 17, and October 24, 1906; January 12, March 11, April 28, June 25, October 22, and December 14, 1907, and March 16, 1908.

From time to time during the said period from December 6, 1904, to March 27, 1908, and at various times, and on various dates which plaintiff is unable to particularly specify, the plaintiff in connection with the various services in said 'Belt Litigation' as specified above, rendered to defendant various legal services in said cause or controversy, and in the protection and prosecution of defendant's interests involved therein in the way of consultation with his said assistant counsel, various witnesses and parties cognizant of facts, expert bookkeepers, officers and employes of defendant; having correspondence with said assistant counsel and said witnesses, parties, bookkeepers, officers and employes; examined great masses of books that had been kept by said Belt, Southern and other companies involved in said cause and volumes of correspondence and other data had between them and bearing upon the said controversy.

During said period made various schedules of things
300 to be done and covering all manner of questions of law, future policy and procedure to be considered and performed in and about said litigation; made certain stipulations and agreements in respect to the conduct of the cause and taking testimony therein; investigated from time to time the various items of collateral security held by defendants and involved in said cause; made various demands upon the various receivers of said subsidiary companies, involving the conservation of said collateral; had made by assistants various reports upon special features of said controversy, as the same were required from time to time; looked after the serv-

ing of notices, and gave directions for the service of subpoenas and other processes.

All of which said services plaintiff is unable more particularly to specify or to give the dates upon which, or the periods within which the same were done or performed.

The total evidence taken in said 'Accounting Case', amounted to 34,614 pages, contained in fifty-six volumes.

All of said services, so rendered by plaintiff and his said local and assistant counsel, were necessary for the due and proper protection of the interests of defendant, the conducting of its defenses and the prosecution of its claims in said litigation and controversy of which defendant had notice.

The correspondence between plaintiff and his said assistant counsel and others, in respect to said litigation and its due prosecution, amounted to about 1,100 letters and telegrams.

The said pleadings and other files, exclusive of the said record of testimony in said cause, amounted to upwards of 3,000 pages; the printed briefs prepared by him as above amounted to 794 pages and the type briefs to about 300 pages.

The said services hereinabove itemized, and shown in said schedule 'A' and 'B' necessarily involved and consumed about 550 days' time of the services of his said several assistant counsel, besides much time of other office as-
301 sistants and clerks and stenographers, which plaintiff is unable to specify or to give the dates or periods upon or within which said services were performed more particularly than as shown hereinabove. In and about said services plaintiff was necessarily required to make, and did make thirty-nine trips from Chicago to Kansas City and return; three trips from Chicago to St. Louis and return, and two trips from Chicago to New York and return; and his said assistant, Rosenberger, was necessarily required to make, and did make, four trips from Kansas City to Chicago and return, and one trip to New York and return; the dates of which various trips of plaintiff and his assistant are shown in the exhibits and statements hereto annexed and hereinafter referred to and which plaintiff is unable more particularly to specify.

In and about the performance of said services in said 'Belt Litigation,' plaintiff incurred a reasonable and necessary

total expense for local and assistant counsel of about $20,000, and which plaintiff cannot more particularly specify.

And plaintiff is unable to more particularly specify which of the above mentioned services were performed by himself personally, and which of said services were performed by his said local or assistant counsel or others, than as shown hereinabove; and is unable to specify the various dates upon which, or the various periods within which the said services were performed, more particularly than as shown hereinabove; and is unable to make a more specific statement as to said services; and is unable to value the said items of service or any of them separately from all the services performed in said litigation.

From the time that plaintiff and his said assistant counsel, Histed, entered their appearance for defendant in said Texas case, in the said United States court, he and said Histed were duly recognized by said court in the various proceedings there had as the sole and regular counsel of record, for defendant in said case; and from the time that the ap-
302 pearance of himself and said Rosenberger was entered in said 'Accounting Case', in said three 'State Court Cases', and in the said Provident Life cases, and in said United States Circuit Court of Appeals, plaintiff and said Rosenberger were duly recognized by said courts, respectively, as the sole and regular counsel for defendant in said case or cases respectively pending therein.

17. Plaintiff, from time to time during the said employment made frequent and specific reports to the President and Executive Committee of defendant; and defendant was, therefore, duly apprised in full from time to time of the scope and course of said litigation and of all the services and the character thereof, performed by plaintiff and his assistants, and as the same are fully set forth above.

All of the services so performed, as set forth hereinabove, including those performed in the said injunction suits and the said 'State Court Cases', were recognized and treated by plaintiff and defendant in the accounts and reports rendered and received from time to time, and in the payments and received on account of the said services and disbursements made in connection therewith, and in all their mutual dealings in reference thereto, as within the scope of such retainer, and as parts of the said 'Belt Litigation' and as all being part and parcel of one employment and retainer, such services to be paid for as an entirety and not as separate items.

18. On or about March 27, 1908, while plaintiff was duly and diligently proceeding with his said services and employment and plaintiff having prior to that time, with all due and proper care, diligence and skill, protected the interests, conducted the defenses and prosecuted the claims of defendant in said 'Belt Litigation', and while plaintiff was then continuing to so protect said interests, conduct said defenses and prosecute said claims, the defendant—without any just or reasonable cause therefor whatsoever—discharged plaintiff from said retainer and employment and substituted other and new counsel therein.

303 19. The said services, so performed by plaintiff and his said assistant counsel, and so rendered by plaintiff to defendant in the said employment and retainer known as the 'Belt Litigation' were of the reasonable value of one hundred thousand dollars ($100,000).

20. That in and about and in connection with said services so performed in said 'Belt Litigation' and from time to time during the period in which said services were performed, as aforesaid, plaintiff, at the special instance and request of defendant, did expend and pay out certain moneys, and did make certain and various disbursements, all for the benefit of defendant and in the due prosecution and protection of defendant's claims and interests in said litigation. Such disbursements, made from December 6, 1904, to January 25, 1906, are shown in detail in a statement hereto annexed and marked 'Exhibit 1', which is hereby made a part hereof as if the same were herein set out at large, the same showing a balance in plaintiff's favor of $5,733.15, and a copy of which statement was delivered to defendant by plaintiff in the due course of his employment as aforesaid on or about January 26, 1906.

That such disbursements, made by plaintiff between January 25, 1906, and June 25, 1907, with the said balance of $5,733.15 carried forward as the first item thereof, are shown in detail in a statement hereto annexed and marked 'Exhibit 2', which is hereby made a part hereof, as if the same were herein set forth at large, the same showing a balance in plaintiff's favor of $8,830.44, and a copy of which statement was delivered to defendant by plaintiff in the due course of his employment as aforesaid on or about June 25, 1907.

Such disbursements made by plaintiff subsequent to June 25, 1907, with said balance of $6,830.44, carried forward as the first item thereof, are shown in detail in a statement

hereto annexed and marked 'Exhibit 3', which is hereby made a part hereof, as if the same were herein set
304 forth at large, which statement shows a balance due plaintiff on said account as of March 27, 1908, of $7,745.07, and a copy of which statement was delivered to defendant by plaintiff in the due course of his employment as aforesaid on or about March 26, 1908.

Annexed to said exhibits and following said 'Exhibit 3' are 'Statement A', 'Statement B', 'Statement C', 'Statement D', 'Statement E', 'Statement F', 'Statement G', 'Statement H', 'Statement I', 'Statement J', 'Statement K', 'Statement L', 'Statement M', which statements are referred to in said exhibits, in which certain amounts shown therein are more particularly set out and which statements and each of them are hereby expressly made a part of the respective exhibits in which the same are referred to, and by that means are also hereby expressly made a part of this petition, as if the same were therein and herein set forth at large.

That there was, on March 27, 1908, thus due and owing to plaintiff on account of said disbursements, a total or aggregate sum of $7,745.07. That the said several sums set out in said Exhibits 1, 2 and 3, were paid out, expended and disbursed by the plaintiff and on his behalf and all for defendant from time to time as the same are shown by said exhibits and by said statements 'A' to 'M' annexed thereto.

(21) That defendant has paid plaintiff on account of said services and disbursements in said 'Belt Litigation' the following sums and them only, namely:

On December 9, 1904	$5,000.00
On September 28, 1905	5,000.00
On February 20, 1906	5,000.00
On August 16, 1906	5,000.00
On July 22, 1907	7,500.00

Making a total of $27,500.00 paid plaintiff on such account.

(22) And plaintiff has applied the sums so paid him on account in total discharge of said sum of $7,754.07, and
305 the remainder of said sum so paid, namely, $19,754.83, plaintiff has applied on account of the said sum of $100,000 due for services as above, thus leaving a net amount due plaintiff, after allowing to defendant all just credits, deductions and set-offs, on account of said 'Belt Litigation' of $80,245.07, as of March 27, 1908, and also interest thereon from said date according to the legal rate therefor.

(23) And in consideration of the premises and of the services so rendered by plaintiff and the disbursements so made by him for and on behalf of the defendant the defendant on, to-wit, the said 27th day of March, 1908, and at, to-wit, Kansas City, aforesaid, promised to pay to plaintiff the said moneys so due.

And thereafter plaintiff, on, to-wit, said 27th day of March, 1908, at, to-wit: Kansas City, aforesaid, demanded of defendant the payment of the said moneys so due as aforesaid, but defendant then and there neglected and refused and does still neglect and refuse to pay to plaintiff the said moneys so due, or any part thereof.

(24) Wherefore plaintiff claims judgment against the defendant for the said sum of eighty thousand two hundred and forty-five and 7/100 dollars ($80,245.07), together with interest thereon from March 27, 1908, at six per cent per annum and his costs in this behalf sustained.

REED, ATWOOD, YATES, MASTIN
& HARVEY,
DANA, COWHERD & INGRAHAM,
Attorneys for Plaintiff.

Second Count.

1. That plaintiff, at the times hereinafter mentioned, was and for over twenty years prior thereto had been and still is an attorney at law in good standing, duly licensed in Illinois, and duly licensed to practice law in the Federal Courts, and engaged in active practice of the profession of law, with headquarters in Chicago, and resident of Illinois, and at times performing professional legal services at various other places in the United States.

2. That defendant, Guardian Trust Company, is and at the times hereinafter mentioned was, and for a long
306 time prior thereto had been a corporation organized, exisiting and operating under the laws of the State of Missouri, as a trust company, having its principal office at Kansas City in said county of Jackson.

3. That on or about December 10, 1904, there [were] pending an unsettled controversy between defendant and the Messrs. Trimble and Braley, practicing lawyers of Kansas City, Missouri, who claimed from said defendant large sums of money, namely, about $22,000, for various legal s rvices rendered to defendant at various times between November 2, 1898 and February 29, 1904, and for disbursements made

during said period, which claim defendant disputed, and which claims involved many different kinds of legal services and the many items therefor and the very long account of said disbursements as shown hereinafter.

4. Thereupon and on or about said December 10 plaintiff was requested, retained and employed by defendant to investigate said claim or claims and to seek to bring about and effectuate a settlement thereof, and to defend defendant in any suit or suits that might be brought against defendant on said claim or claims, and to assert certain counter-claims and offsets which defendant claimed to have against said Trimble and Braley; and in the conduct of said negotiations for settlement and in the investigation of the merits of said claim or claims, counter-claims and offsets and for the due and proper protection of the interests, conducting the defenses and prosecuting the counter-claims and offsets of defendant in the suit that was brought upon such claim, as hereinafter stated, it became and was necessary for plaintiff to employ assistant and local counsel on his behalf, of which fact the defendant had notice and which employment was approved, acquiesced in and consented to by defendant.

5. Plaintiff immediately and on or about December 12, 1904, retained and employed Messrs. Harkless, Crysler and Histed, practicing lawyers at Kansas City, Missouri,
307 duly licensed to practice law in the state and federal courts there held, whom he chose as his assistant and local counsel to assist him on his behalf in said investigation and negotiations and in the litigation subsequently commenced upon said claims, as hereinafter stated. Plaintiff, thereupon and on or about said December 10th, entered into negotations with said Trimble and Braley for a settlement of said controversy, which extended over a number of months' time, namely, until about August 30, 1905, when said negotiations failing, said Trimble and Braley commenced suit against defendant upon the said claims in the Circuit Court of Jackson County, Missouri, Case No. 25,346. Immediately thereafter and on or about September 10, 1905, plaintiff entered his appearance in said cause, along with that of Messrs. Harkless, Crysler and Histed, as counsel for defendant, plaintiff and said assistant counsel being thereafter recognized by said court as the sole and regular counsel for defendant therein, and proceeded thereafter to protect defendant's interest, conduct its defenses and prosecute its counter-claims in said cause. Said counter-claim consisted in (1) a claim against said Trimble and Braley for

negligence in managing the defense of defendant to the bill of complaint in what was known as the Bierce Case No. 2,463, of the United States Circuit Court held at Kansas City; (2) a similar counterclaim for negligence in managing the defense of defendant in what was known as the Cambria Steel Company Case, No. 2,468, and the case ancillary thereto, No. 2,616, in the said United States Circuit Court, each of said counter-claims being for the amount of $100,000; (3) a counter-claim of about $2,000 arising out of what was known as the 'Lombard Matter'; (4) a counter-claim of $6,000, arising by virtue of the fact of a payment of that amount having been made by defendant to one Wash Adams, Esq., on account of an alleged failure of Trimble and Braley to pay him the sum, they being liable therefor.

After the issues had been made up in said cause, the same were referred to a referee to take evidence and report his conclusions of law and fact therein; said report was in
307 due course filed in court on or before August 10, 1907, and the cause was later heard by the court upon the exceptions to said report, and was taken under advisement and was so held, and was pending at the time plaintiff's employment in said matter was ended, as hereinafter stated.

6. In the due prosecution of said negotiations for settlement of said controversy and in the investigation of said claims, and in the due prosecution of said cause and the counter-claim and defenses of defendant therein between said December 10, 1904 and March 27, 1908, and at various dates and times during said period, which plaintiff cannot more particularly specify than as specified in the following itemized schedule, plaintiff and his said assistant counsel in his behalf, and acting in conjunction with plaintiff and under his direction and supervision at the special instance and request of defendant rendered professional legal services to defendant, which said services, so performed and so rendered by plaintiff, are itemized in the following 'Schedule C'.

In the following schedule the year in which the said services were respectively performed, is shown in the margin in chronological order. Where a month is referred to without the year being given, said month falls within and is referrable to the year next preceding the item and set in the margin.

'Schedule C'

Being Schedule of Service of Plaintiff in said 'Trimble and Braley Matter'.

1904. (1) Examination of Bill rendered by Trimble and Braley, 149 items of cash disbursed and 60 items of services rendered in 16 different controversies and suits, the said bill covering a period from November 2, 1898, to February 29, 1904, and consultations from time to time with claimants in respect thereto, and the various items therein, in order to be advised of the merits of said items.

1905. (2) Having assistant, Histed, examine into the merits of the $6,000 item for services in the foreclosure
309 cases of Texarkana and Shreveport railroad mortgages, and to the claims as set forth in foreclosure case against the Kansas City, Pittsburg and Gulf R. R. Company, pending in the Federal Court at Kansas City, in which state Trust Company was complainant, and having report by assistant made thereon.

(3) Acting with and advising with two Messrs. Prescott and Heyneker, two members of Executive Committee of defendant, appointed by said Committee, together with plaintiff as sub-committee to negotiate a settlement of said claims.

(4) Making a report upon said claims and as to negotiations for settlement to said Executive Committee under date of February 4, 1905, and as to merits of said controversy and as to cross-claims for negligence.

(5) Making similar report on June 1, 1905.

(6) Drawing notice, application and affidavits, and making and arguing application to court in the Bierce case for permission to defendant to consummate settlement at $9,000 agreed on by five members of the Executive Committee, application denied by Court on October 12, 1905.

(7) Received notice of suit commenced by Trimble and Braley, August 20, 1905, examined petition, and appeared by Assistant Counsel in court on motion to order case to a referee.

(8) Made further negotiations for settlement of cause after suit was commenced.

(9) Looked into question of whether U. S. Court, by proceeding in the Bierce case, had power to enjoin Trimble and Braley suit, and correspondence with assistant counsel and members of Executive Committee in reference thereto.

(10) Drawing first draft of answer by assistant, and completing same and drawing cross claims for negligence in con-

ducting defense of defendant in the Bierce and Cambria cases.

310 (11) Drawing second amended answer to petition, nineteen items (32 pp).

1906. (12) Attending upon the taking of evidence by plaintiff therein, from February 1, to March 22.

(13) Making examination through assistant of old books and papers of defendant and of various pleadings in the case in which Trimble and Braley had performed services for defendant, consultations with witnesses and preparing to put in defendant's evidence therein.

(14) Taking testimony for defendant in said cause from March 22, 1905, to August 31, 1905.

(15) Preparing for hearing and attendance thereupon, lasting five days, and making oral argument in said cause on behalf of defendant, argument completed about September.

(16) Examining various briefs of opposition submitted at various times during the reference, amounting to four in number and over 80 pp. Preparing for defendant typewritten brief (79 pp) for defendant, also printed brief (66 pp) and printed propositions of law and special findings of fact (34 in number).

(17) Amending answer increasing ad damnum clause of two negligence cross-claims to $200,000 in each case or $200,000 in both, and appearing in court and obtaining leave therefor, and making report to defendant Sept. 6, 1907.

(18) Appearing in court from time to time on orders extending time for filing report of referee.

(19) Examining Master's report (10 pp) filed August 10, 1907, and drawing and filing exceptions thereto (23 pp and 68 objections).

(20) Preparing for hearing before Judge Slover of exceptions to Master's Report, and making argument thereon two days, Sept. 26, and 27, 1907.

(21) Making full abstract of the record of testimony and exhibits in said cause, completed October 25, 1907, (Abstract 325 pp).

(22) Having minutes of record brought down and
311 having certain exhibits corrected, and record tested for possible appeal.

(23) 'Further Argument on Defense of Estoppel' prepared and printed, completed December 13, 1907 (34 pp).

(24) Examining new argument of Trimble and Braley in answer to 'Estoppel' brief of defendant (27 pp).

(25) Making up new brief on question of estoppel not being pleaded, and drawing motion to amend in accordance with proof and letter of suggestions to Judge Slover and filing same, court taking whole case under advisement, about January 8, 1908.

(26) From time to time between December 10, 1904, and March 27, 1908, on various dates which plaintiff is unable to particularly specify, the plaintiff in connection with the services so specified above, rendered to defendant various legal services in said cause, and controversy, and in and about protection and prosecution of defendant's interest involved therein, in the way of consultations with his said assistant counsel, with various witnesses and parties cognizant of facts, had correspondence with his said assistant counsel and said witnesses and parties, and examined various books, records, court files and other data bearing upon said matter, which services plaintiff is unable more particularly to specify.

All of said services so rendered by plaintiff and his said local assistant counsel were necessary for the due and proper protection of the interests of the defendant, the conduct of its defenses and the prosecution of its claims in said litigation and controversy, of which defendant had notice.

The said services hereinabove itemized and shown in said 'Schedule C' necessarily involved and consumed about 73 days' time of the personal services of the plaintiff, and about 50 days' time of his said assistant counsel, besides much time of other office assistants and clerks and stenographers which plaintiff is unable to specify or to give the dates or periods upon which or within which said services were performed more particularly than as shown hereinabove.

In and about the performance of said services in said
312 'Trimble and Braley Matter' plaintiff incurred a reasonable and necessary expense for local and assistant counsel of about $1,300, and which plaintiff cannot more particularly specify.

Plaintiff is unable to more particularly specify which of the above mentioned services were performed by himself personally, and which of said services were performed by his local or assistant counsel or others than as shown hereinabove; and is unable to specify the various dates upon which or the various periods within which the said services were performed, more particularly than as shown hereinabove; or to make a more specific statement in respect to said services; and is unable to value the said items of service or any of them separately from all the services performed in said litigation and controversy,

7. Plaintiff from time to time during his said employment as shown above and also on October 25, 1906, February 7, and October 22, 1907, and March 16, 1908, made specific reports to the president and executive committee of defendant; and defendant was, therefore, duly apprised in full, from time to time, of the scope and course of said litigation and controversy, and of all the services and the character thereof performed by plaintiff and his said assistants and as the same are fully set forth above.

All of the services so performed as set forth hereinabove were recognized and treated by plaintiff and defendant in the accounts and reports rendered and received from time to time, and in all their mutual dealings in reference thereto as within the scope of said retainer, and as parts of said 'Trimble and Braley Matter' and as all being part and parcel of one employment and retainer, such services to be paid for as an entirety and not as separate items.

8. On or about March 27, 1908, while plaintiff was duly and diligently proceeding with his said service and employment, plaintiff having prior to that time with all due and proper care and skill, protected the interests, conducted the defenses and prosecuted the claims of defendant in said 'Trimble and Braley Matter' and while plaintiff was
313 then continuing to so protect said interests, conduct said defenses and prosecute said claims, the defendant—without any just or reasonable cause therefor whatsoever—discharged plaintiff from said retainer and employment and substituted other and new counsel therein.

9. The said services so performed by plaintiff and his said assistant counsel, and so rendered by plaintiff to defendant in the said employement and retainer known as the 'Trimble and Braley Matter' were of the reasonable value of ten thousand dollars ($10,000).

10. That in and about and in connection with said services so performed in said 'Trimble and Braley Matter' and from time to time during the period in which said services were performed as aforesaid, plaintiff at the special instance and request of defendant did expend and pay out certain moneys and did make certain and various disbursements, all for the benefit of defendant and in the due prosecution and protection of defendant's claim and interest in said litigation, and controversy. Such disbursements are shown in detail in a statement hereto annexed and marked 'Exhibit 4' which is hereby made a part hereof as if the same were herein set out at large, the same showing a balance in plaintiff's favor as of March 27, 1908, of $433.07. and a copy of which statement was delivered to defendant by plaintiff on or about March 27, 1908.

That there was on March 27, 1908, thus due and owing to plaintiff on account of said disbursements a total or aggregate sum of $433.07. That the said several sums set out in said 'Exhibit 4' were paid out, expended and disbursed by the plaintiff and all for the defendant from time to time as the same are shown by said exhibit.

11. That defendant has paid plaintiff on account of said services and disbursements in said in said 'Trimble and Braley Matter' the following sums and them only, viz:

On December 5, 1905	$ 300.00
On July 12, 1906	500.00
On October 31, 1906	700.00
On January 24, 1908	1000.00
Making a total of	$2500.00

314 paid plaintiff on said account. And plaintiff has applied the sums so paid to him on account in total discharge of said sum of $433.07, and the remainder of said sums so paid, namely, $2066.93, plaintiff has applied on account of the said sum of $10,000.00 due for services as above, thus leaving a net amount due plaintiff after allowing on account of said 'Trimble and Braley matter' of $7,933.07 of March 27, 1908, and also interest thereon from said date according to the legal rate therefor.

12. And in consideration of the premises and of the services so rendered by plaintiff and the disbursement so made by him for and on behalf of the defendant the defendant on, to-wit: the said 27th day of March, 1908, and at, to-wit:

Kansas City aforesaid, promised to pay to plaintiff the said moneys so due.

And thereafter plaintiff, on to-wit: the said 27th day of March, 1906, at, to-wit: Kansas City aforesaid demanded of defendant the payment of the said money so due as aforesaid, but defendant then and there neglected and refused and does still neglect and refuse to pay to plaintiff the said moneys so due, or any part thereof.

Wherefore, plaintiff claims judgment against the defendant for the said sum of seven thousand nine hundred thirty-three dollars and seven cents ($7,933.07), together with interest thereon from March 27, 1906 at six per cent per annum together with his costs in this behalf sustained.

REED, ATWOOD, YATES, MASTIN & HARVEY,
DANA, COWHERD & INGRHAM,
Attorneys for Plaintiff.

Plaintiff's Exhibit I.

In the circuit Court of Jackson County, Missouri, at Kansas City Harry S. Mecartney, Plaintiff, vs. The Guardian Trust Company, Defendant, Case No. 28412.

'Exhibit 1'

Referred to in the First Count of and Annexed to the Petition in said case.

January 25, 1906.

Guardian Trust Company,
To Harry S. Mecartney, Dr.
Attorney and Counselor,
1 45 La Salle Street.

313			Cash Disbursements 'Belt Litigation' Dec. 5, 1905, to Jan. 25, 1906.		
Item No.	1906				
1	Dec.	6-6	To expenses to Kansas City, two days:		
			Railway fare and berths	$20.00	
			Meals, hotels, telegrams, incidentals	11.90	$61.9
2	Dec.	21	To expenses Kansas City, Dec. 14-21:		
			Mileage ticket	27.00	
			Berth, both ways	6.00	
			Meals and incidentals in transit	7.35	
			Coates House	18.75	
			Stenographer, telegrams, messenger	4.25	94.3

3	Dec.	21	To express on two packages to Kansas City		1.30
	1905				
4	Jan.	6	To clerk U. S. Circuit Court, Beaumont, Texas, for lists of orders in 10th and 11th in equity		2.00
5	Jan.	7	To express on package to and from Kansas City		1.10
6	Jan.	19	To cash advanced by J. C. Rosenberger, as per his statement of January 17, 1906, a and marked as 'Statement A'		44.20
7	Jan.	23	To expense to and from Kansas City		31.00
8	Jan.	24	To sundry telegrams for December		2.35
9	Jan.	25-27	To expense to Kansas on said dates:		
			Railway fare and berths		13.00
			Meals and Hotel		4.50
11	Jan.	31	To express on trunk to Kansas City		2.30
12	Feb.	2	To expenses to Kansas City February 2:		
			Mileage	$60.00	
			Hotel	9.50	69.50
13	Feb.	6	To telephone consultation with Mr. Harris at Champaign, Illinois		3.00
14	Feb.	9	To express on trunk to Kansas City		2.32
15	Feb.	13	To express two packages, different dates		1.30
16	Feb.	15	To January telegrams, seven in all		3.04
			Amount forwarded,		$ 223.12
			Brought forward		$ 223.12
17	Feb.	17-18	To express on trunk from Kansas City and package to same		2.60
18	Mar.	1	To Frank B. Wilcox, expert and accountant		450.00
19	Mar.	9	To two telegrams from Kansas City and postage on package legal papers		1.46
20	Mar.	10	To telegrams in Feb. bill of Western Union		2.55
21	Mar.	10	To expenses to and from Kansas City, including railway fares, berths, hotel bill, telegrams and stenographer		23.85
22	Mar.	17	To expense to Kansas City 13th-17th inc.		
			Mileage	$60.00	
			Hotel	14.30	
			Stenographer	3.75	
			Berths, meals, incidentals, telegrams	11.70	89.75
23	Mar.	31	To expense of Mr. Brown, assistant to		
24			Kansas City, Mar. 12-29, inclusive:		
			Railway fare and berths	$30.00	
			Hotel Expense	43.25	$ 73.25
25	Mar.	31	To expense of self to Kansas City:		
			Berths	5.00	
			Hotel	19.10	
			Telegrams	3.50	

			Meals in transit	4.95	
			Incidentals	1.75	34.80
25	Apr.	1	To cash in payment of bill rendered by J. C. Rosenberger for sundry advances as per bill marked 'Statement B'		119.93
26	Apr.	17	To telegrams in March bill of Western Union eight in all to Kansas City, Champaign and Jefferson City		7.84
27	April	19	To expense to Kansas City and return 19-21 inclusive, vis: berths, meals, fare on way and telegrams		31.80
28	Apr.	19	To cash in payment of statement of J. C. Rosenberger, April 14, 1905, in which principal items are MacDonald $25 and Wilcox $50, and remainder, incidentals, marked 'Statement C'		87.18
29	May	5	To expense to Kansas City Apr. 30-May 5 inc.:		
			Fare and berths	30.00	
			Meals on train	4.70	
			Hotel, stenographer three days, meals of associates,	19.75	54.45
30	May	10	To Barnard & Miller, printing report		1.00
			Amount carried forward,		$1303.07
			Amount brought forward		$1303.07
Item No.	1905				
31	May	17	To Barnard & Miller, printing second report		5.25
32	June	12	To expense to Kansas City June 6-8 inclusive:		
			Railway fare and berths	30.00	
			Meals in transit	5.00	
			Hotel	9.00	
			Incidentals	3.30	47.30
33	June	12	To telegrams in May bill		2.05
34	June	12	To Riley Publishing Company printing answer ancillary bill and answer to intervening petition		121.25
35	June	23	To expense to Kansas City to June 23rd:		
			Railway fare and berths	30.00	
			Meals in transit	5.30	
			Hotel, telegrams and incidentals	11.50	46.80
36	June	19	To Barnard & Miller for printing brief in case v K. C. & So. Ry. with second edition		104.00
37	Jul.	8	To expense to Kansas City:		
			Railway fare and berths,	30.00	
			Meals, hotel and incidentals	11.93	41.93

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38	July.	10	To cash in payment of bill of J. C. Rosenberger, dated July 10, 1905, and marked 'Statement D'		$133.85
39	Aug.	19	To express on package transcripts to Kansas City		1.00
40	Aug.	28	To telegrams June bill Western Union, six in all		2.00
41	Aug.	26	To same July and August		2.04
42	Sept.	14	To cash in payment of bill of J. C. Rosenberger, this date, in which certain leading items are as follows: F. M. Cook $90; Cert. copy bill complaint, $12.75, services Flinton, $20; F. A. Wright, $300; Doran, $150; Stenographer, $15.15, see bill marked 'Statement E'		609.76
43	Sept.	12	To expenses to Kansas City, this date, consisting of berths, meals, hotels, etc.		13.35
44	Sept.	18	To Barnard & Miller, printing brief, injunction matter before Judge Phillips		12.75
45	Oct.	4	To express on package from Kansas City		.25
			Amount carried forward,		$2446.85
			Amount brought forward,		2446.85
Item No.	1905				
46	Oct.	12	To expenses to Kansas City 9-12 inclusive, as follows:		
			Berths, Meals, etc.	$10.50	
			Hotel, extra meals, stenographer and telegrams	9.30	19.80
47	Oct.	12	To telegram to Johnson, Philadelphia		.45
48	Oct.	18	To expenses of A. M. Strong, attorney, assistant, while in Kansas City, as follows:		
			Railway fare, berth, meals	1.00	
			Telegrams and expressage	2.80	
			Board and room, 4 weeks	65.75	
			Carfare and sundries	6.00	91.55
49	Oct.	19	To expenses of self to Kansas City 17-19:		
			Mileage ticket	60.00	
			Berths and meals	11.50	71.50
50	Oct.	28	To telegrams, Sept. bill, Western Union		.60
51	Nov.	6	To express on package containing record		1.15
52	Nov.	13	To cash in payment of bill of J. C. Rosenberger, of this date, leading items as follows, marked 'Statement F', F. M. Cook $96, appeal from injunction $25, printing record, $547, Wright $500, etc.		1284.81
53	Nov.	15	To telegrams in Oct. bill, Western Union		2.94

54	Nov.	15	To expenses of A. M. Strong, Atty. assistant, while in Kansas City, Oct. 15-Nov. 15/05:		
			room rent, St. John apartment	$20.00	
			Board at Six Dollars per week	18.00	
			Incidentals	10.00	
			Railway fare, berth and meals	16.00	64.00
318					
55	Nov.	16	To C. O. Tichenor, Atty. for opinion as to Ultimate Liability of the Kansas City and Southern Railway		$ 500.00
56	Nov.	17	To special wrappers and cost of mailing said opinion to Directors and others		2.00
57	Nov.	20	To express on said report to New York		.35
58	Nov.	20	To Barnard & Miller, printing 108 copies of said Tichenor opinion		20.50
59	Nov.	24	To express on package to Kansas City		.55
			Amount carried forward		$4507.05
			Amount brought forward		$4507.05
Item No.	1905				
60	Nov.	25	To expenses to Kansas City, Nov. 23-25, as follows:		
			Berth	$ 5.00	
			Meals	4.60	
			Hotel	2.00	
			Incidentals	2.00	
			Mileage	60.00	73.60
61	Nov.	29	To postage and express on briefs and other packages		2.18
62	Nov.	29	To Barnard & Miller, printing brief for appellants, case v K C & So Ry		45.00
63	Dec.	9	To W. H. Edwards & Co., stenographers, emergency brief work and copying from Oct. 7th to Nov. 9th, 1905		28.52
64	Dec.	16	To express on two trunks from Kansas City		4.10
65	Dec.	18	To bill expenses of self, to Kansas City Dec. 18-20/05, as follows:		
			Berths	$ 5.00	
			Meals on train	4.60	
			Hotel, telegrams, incidentals	5.10	14.70
66	Dec.	20	To express on record to Kansas City		1.20
67	Dec.	20	To telegrams Nov. bill Western Union		2.19
68	Dec.	29	To cash in payment of cash advanced by J. C. Rosenberger in statement dated Dec. 28/05, marked 'Statement G' leading items as follows: Cook $12, traveling expenses J. C. Rosenberger to Chicago, Detroit and New York, $178.50,		

			Linton in dep. of Cone $20.00, Sullivan & Cromwell acct. of depositions $150.00		381.24
69	Dec.	29	To Barnard & Miller, printing cross-bill Cambria Steel Co. v. K. C. and So. Ry. Co.		29.25
70	Dec.	31	To telegrams Dec. bill Western Union		2.72
	1906				
71	Jan.	3	To cash advanced by J. C. Rosenberger for stenographic, notary and other services while in New York, in three depositions, see bill of Jan. 3, /06 marked 'Statement H'		65.70
72	Jan.	6	To express package from Kansas City		1.75
73	Jan.	13	To expenses to St. Louis Jan. 10-13, viz: Fare and berth, $6.45, stenog. and telegrams $3.20, hotel and meals, 3 days $19.25, inc. 75		29.65
			Amount carried forward		$5188.85
319			Amount brought forward		$5188.85
Item No.	1906				
74	Jan.	17	To expenses to St. Louis, Jan. 14-17 as follows:		
			Railway fare and berth	$20.00	
			Meals in transit	1.80	
			Hotel three days	11.25	
			Incidentals, including stenographic work	3.20	36.25
75	Jan.	17	To bill for printing Reply Brief in injunction suit v K. C. & So. Ry		9.75
76	Jan.	22	To express on two trunks containing records in suit v K. C. So. Ry		4.30
77	Jan.	22	To cash paid S. B. Willey, expert work		300.00
78	Jan.	22	To cash paid C. W. Hastings. (Sept. 30-05)		100.00
79	Jan.	22	To cash paid balance due F. A. Wright over and above previous payments charged in place		458.00
			Total		$6097.15
			Credit.		
	(1)		By amount refunded by Western Passenger Association on six 2M mile tickets $19.50 on each	$117.00	
	(2)		By proportion of telegrams in channel and Dock case	6.80	
	(3)		By reduction on account of hotel bills previously charged	40.00	
	(4)		By amount transferred to general account as per bill rendered October 20, 1905, being proportion of railway fare, berths, meals and hotel expenses in attending		

seven meetings of the Executive Committee at Kansas City	200.00	363.80
Debit Balance		$5733.35

Plaintiff's Exhibit 2

In the Circuit Court of Jackson County, Missouri, at Kansas City Harry S. Mecartney, Plaintiff vs The Guardian Trust Company, Defendant, Case No. 38412

'Exhibit 2'

Referred to in the First Count of and annexed to the Petition in said Cause.

June 25, 1907.

Guardian Trust Company,
To Harry S. Mecartney, Dr.
Cash Disbursements 'Belt Case'

Jan. 25, 1906 to June 25, 1907.
To debit balance brought forward from bill of January 25, 1906 $5733.35

Item No.	1906				
80	Feb.	6	To expense to Kansas City, three days:		
320			Railway fare and berths	$30.62	
			Hotel and meals	7.80	$ 38.42
81	Feb.	24	To expense to Kansas City, two days:		
			Railway fare and berth	30.00	
			Meals in transit	4.60	
			Hotel and meals	4.20	
			Telegram to St. Louis	.27	39.07
82	Feb.	21	To bill of J. C. Rosenberger for cash advanced by him (see statement I) less certain items in said bill previously charged in Statement H		125.87
83	Apr.	3	To express, two packages and one telegram, different dates		1.50
84	Apr.	21	To expense to Kansas City several days:		
			ticket (2M miles)	60.00	
			Berths	5.00	
			Meals on train and expenses	5.60	
			Hotel	7.80	
			Telegrams and expressage	1.90	80.30
85	May	1	To cost of typewritten copy of abstract of testimony and exhibits		37.60
86	May	8	To bill of J. C. Rosenberger for cash advanced by him (See Statement J)		132.16
87	May	8	To express on record to Kansas City and key for box		.60
88	May	14	To cost of typewritten copy of affidavits and Master's report, 37 pp. two copies		13.00
89	May	18	To telegrams to Kansas City, Mar., Apr.		1.14

90	May	19	To expense to Kansas City, three days:		
			Tickets and meals	30.00	
			Expense on train	5.00	
			Hotel	7.50	
			Stenographic service	4.50	46.90
91	May	26	To express on three packages		.-0
			Carried forward		$6251.21
			Amount brought forward		$6251.21
92	May	31	To Bill of Barnard & Miller, printing argument Cambria Steel Co. v. Belt R. R. Co., also argument on Issues of Intervention		123.00
93	June	1	To Edwards & Co., stenographers, copying documents, 59 pp. three copies at 25¢		14.75
94	June	1	To express on package to New York		.32
95	June	7	To expense to Philadelphia and New York:		
			Railway fares to and return	64.50	
			Philadelphia	5.00	
			Meals	5.00	
			Hotel, telegrams, etc.	21.00	
			One-half of above expense chargeable to this account		47.75
96	June	15	To express and postage on packages to New York		1.23
321					
97	June	18	To Barnard & Miller, printing analysis 'Item' complaints, etc.		$ 31.50
98	June	18	To same for printing exhaustive letter to Lloyd in connection with negotiations for settlement		30.00
99	June	20	To Clerk of U. S. Circuit Court, St. Louis copy of opinion in case v. K. C. &So. Ry.,		5.00
100	June	21	To expense to Kansas City, three days,		
			Berths	$ 5.00	
			Meals and other expenses on train	5.40	
			Hotel, stenographer and telegrams	9.00	19.40
101	June	21	To telegrams in May, six in all		2.18
102	June	30	To expenses to Kansas City, four days:		
			Ticket	60.00	
			Berth and meals on train	8.40	
			Hotel	7.35	
			Telegram and stenographers	2.30	78.05
103	Aug.	18	To costs advanced by J. C. Rosenberger, see Statement K		96.30
104	Aug.	18	To telegrams paid in June 1906		7.62
			Amount carried forward		$6708.31

Item No.						
			Amount brought forward			$6708.31
	1906					
105	Aug.	18	To expense of two trips to Kansas City between July 4 and 14, in argument of case, nine days in all:			
			Room in hotel		17.00	
			Railway fare		13.70	
			Berths		10.00	
			Meals on train		10.00	
			Other expenses		1.00	
			Meals at Kansas City		19.75	
			Stenographer and telegrams		3.60	75.05
106	Oct.	25	To expense to Kansas City, two days:			
			Hotel		30.00	
			Meals		7.50	37.50
107	Nov.	23	To expense of J. C. Rosenberger's trip Kansas City to Chicago, and return, November 21 and 22			39.50
108	Dec.	20	To telegram to Kansas City			.30
	1907					
109	Jan.	10	To expense to Kansas City, three days:			
			Berths, meals, hotel, etc.			39.40
110	Feb.	12	To telegrams, express, postage, Jan. Feb.			2.10
111	Feb.	12	To expenses to Kansas City, two days:			
			Ticket		50.00	
			Berth and meals on train		11.75	
			Expense at Kansas City		4.50	66.25
112	Feb.	13	To Barnard & Miller, printing supplemental argument, Cambria appendix			57.75
113	Mar.	4	To Barnard & Miller, printing supplemental argument, Cambria Steel Co. v. K C Suburban Belt R. R. Co.			64.50
114	Mar.	4	To same, printing 6 copies supplemental Analysis of Item 15			4.50
322						
115	May	20	To Expense to Kansas City, two days:			
			Train expense and berths		11.20	
			Hotel bills		10.35	21.55
116	May	24	To expenses to Kansas City, two days:			
			Ticket (2M miles)		50.00	
			Berths and other expenses on train		12.75	
			Hotel and other expenses		6.60	69.35
117	June	1	To C. H. Aldrich for writing opinion on accounting case			350.00
118	June	5	To cash to the order of C. O. Tichenor on account, for opinion in Cambria case			100.00
			Amount carried forward			$7636.06
			Amount brought forward			$7636.06
Item No.	1907					
119	June	5	To expense to Kansas City:			

120	June	13	To special stenographic service, "Suggestions' and 'Brief on Motion		6.00
121	June	14	To expenses to Kansas City, two days: Ticket (2M miles)	50.00	
			Berths, meals, hotel, etc.	15.25	65.25
122	May	19	To Barnard & Miller, printing suggestions for plaintiff in state court cases, outlining petition, etc.	10.50	
			Supplemental Argument in Intervention and Cross-bill, consolidation issue	85.00	95.50
123	June	17	To same, Suggestions to Plaintiff in support of motion to set cases in opposition to motion to stay		30.00
124	June	18	To same, reprinting corrected Supplemental Argument on consolidation issue, etc.		28.00
125	June	18	To express and postage sundry articles sent June 7-11-12		1.90
126	June	20	To sundry telegrams charged to us in our May bill, chargeable to this account		1.62
127	June	20	To express and postage on sundry articles		1.93
					$7878.86

Credits.

	1906				
(5)	July	16	By cash refunded on 2M mile ticket,	$19.50	
(6)	July	18	By cash refunded on 2M mile ticket,	19.50	
(7)	Aug.	18	By refund acct. costs U. S. Cir. Court of Appeals in K. C. So. Inj. Appeal	45.70	
(8)	Aug.	27	By part refund acct. 2M mile ticket	9.16	
(9)	Oct.	26	By cash refunded on 2M mile ticket	19.50	
	1907				
(10)	Apr.	27	By costs in injunction case	935.06	1048.42
			Debit Balance		$6830.44

323 'Plaintiff's Exhibit 3'

In the Circuit Court of Jackson County, Missouri, at Kansas City, Harry S. Mecartney, Plaintiff vs The Guardian Trust Company, Defendant, Case No. 38412.

'Exhibit 3'

Referred to in the First Count of and Annexed to the Petition in said case.

March 27, 1908.

Guardian Trust Company
To Harry S. Mecartney, Dr.
Attorney and Counselor,
145 So. LaSalle Street.

Cash Disbursements Belt Case.
June 25, 1907, to this date.

			Balance brought forward from statement	$ 6,830.44
No. of Item	1907			
129	June	26	To expense to Kansas City, June 21-23, berths, meals and expenses on train	16.75
129	June	27	To postage on briefs to Directors	.50
130	July	7	To three telegrams in June bill	1.85
131	Nov.	18	To telegram	1.21
132	Nov.	23	To expense to Kansas City and return Nov. 21-22	23.20
133	Dec.	1	To expense to St. Louis and return	19.60
134	Dec.	14	To expense to Kansas City and return, Dec. 14-16	34.20
135	Dec.	18	To preparing and expressing package to Kansas City	.75
136	Dec.	18	To Barnard & Miller, printing 'Suggestions in Opposition', etc. Cambria Steel; To same for printing answer	29.50
			Amount carried forward	$ 6958.00
			Amount brought forward	6958.00
No. of Item	1907			
137	Dec.	19	To Barnard & Miller, printing draft of decree, Cambria Steel	13.50
138	Dec.	19	To express on package to Judge McPherson	.45
139	Dec.	28	To telegrams in November bill	1.47
	1908			
140	Jan.	8	To bill of Adelaide Utter, stenographer, certified copy bill of complaint	12.35
141	Jan.	8	To cash as per statement by Rosenberger & Reed, expenses in Guardian Trust matters, from Jan. 2, 1907 to Dec. 14, 1907	110.86

Statement L.

142	Jan.	17	To cash Barnard & Miller, printing affidavit of H. S. Mecartney, 59 pages and revision	55.87
143	Jan.	24	To cash, expenses to Kansas City, Jan. 21-24 inclusive	37.00
144	Jan.	28	To cash, bill of Brown, Adams & Brown, court reporters, arguments on hearing of application for injunction in Swinney,	
324			Receiver, et al., in U. S. Circuit Court	107.00
145	Jan.	29	To telegrams in December and January bills	1.97
146	Feb.	18	To two telegrams	1.05
147	Feb.	24	To telegram from Kansas City	.50
148	Feb.	17	To expenses to Kansas City, three days	38.14
149	Feb.	27	To expenses to Kansas City, 2½ days	38.35
150	Feb.	29	Telegrams from Kansas City	1.44

151	Mar. 6-14	To express on package (.35) February telegrams ($1.50) express on brief (.60), cases to contain records ($2.85)		5.30
152	Marh. 20	Telegram from Kansas City		.40
153	Mar. 14	To supplementary items in bill of Brown, Adams & Brown, court reporters		17.00
154	Mar. 23	To bill of Brown, Adams & Brown, in case of Swinney et al. attendance federal court four days		10.50
155	Mar. 26	To bill of Barnard & Miller, printing bill Cambria Steel Co. etc.		32.07
		Amount carried forward		$ 7443.82
		Amount brought forward		$ 7443.82
No. of Item	1908			
156	Mar. 26	To expenses of H. S. M. to Kansas City and return, Mar. 23-29, six days		76.20
157	Mar. 26	To express on trunk filed with papers		.50
158	Mar. 26	To stenographic service in emergency matters		41.00
159	Mar. 26	To Rosenberger & Reed for costs advanced by them, as per their bill of April 17, 1908		28.25

Statement M

160	Mar. 26	To sundry telegrams		5.70
161	Mar. 26	To bill of Geo. H. Williams for dictation and copying		10.00
162	Mar. 26	To bill of Kansas City View Co., for photographs of the record		18.00
163	Mar. 27	To bill of Jas. C. Jones, at St. Louis for conferences with self and Rosenberger		250.00
		Total debits		$ 7873.57
	1907	Credits		
(11)	June 15	Rebate on ticket	$ 9.50	
(12)	June 26	Rebate on ticket	9.50	
(13)	Oct. 2	C. O. Tichenor	100.00	
(14)	Dec. 2	Rebate on ticket	9.50	128.50
		Net balance due for disbursements March 25, 1907		$ 7745.07

In the Circuit Court of Jackson County, Missouri, at Kansas City, Harry S. Mecartney, Plaintiff vs. The Guardian Trust Company, Defendant, Case No. 38412.

335 The following 'statements'

Are statements mentioned in the first count of the foregoing amended petition in said cause and in the foregoing exhibits thereto, of which statements 'A' 'B', 'C', 'D', 'E', 'F', 'G', and 'H' are referred to in said 'Exhibit 1', and of which

statements 'I', 'J' and 'K' are referred to in said 'Exhibit F'; and of which statements 'L' and 'M' are referred to in said 'Exhibit J'.

Statement 'A'

Kansas City, Jan. 17, 1905

H. S. Macartney

to J. C. Rosenberger, Dr.

Cash advanced as per receipts attached:

To Brown, Barnett & Adams, for stenographic services rendered in taking testimony before S. C. Douglass, Special Master, on December 20, 21 and 22, in the Cambria Steel Company matter, and transcribing same	$ 32.50
To R. C. Pearson, for stenographic services rendered in preparing brief in connection with Cambria Steel Company matter, for Mr. Rosenberger, Jan. 17, 1905	20.00
To Western Union Tele. Co. for telegrams to Mr. Macartney of date 12-22-04—22d—12-30-04—30d	1.80
	$ 54.30

(Paid J. C. Rosenberger 1/21/05)

Statement B

Kansas City, March 17, 1905

H. S. Macartney

to J. C. Rosenberger, Dr.

To cash advanced (Receipted Vouchers attached)

1905		
1/4	To drayage on testimony	.50
24	To telegram to Mr. Macartney	.60
	To telegram to Mr. Macartney	.50
25	To telegram to Mr. Macartney	.50
	To telegram to Mr. Macartney	.50
30	To telegram to Mr. Macartney	.50
2/3	To messenger to Bryant Bldg. for key to trunk	.15
15	To drayage on trunk on 2/3/05	.50
	To express charges on trunk on 2/3/05	.35
	To lunch and dinner with Wilcox	4.00
2/1	To R. J. Holmden, Steno. petition	2.00
	To Miss Adelaide Utter, Steno. copy order No. 2605	.35
	To Miss Genevieve Partin Steno. Int. Petition	4.75
7	To drayage on law books from Southern Off's	1.25
	To telegram—Chicago	.25
10	To R. J. Holmden, Steno. Exhibits	1.00
11	To Locksmith, to open desk R. J. Holmden for papers	.50
1	To R. J. Holmden, Steno. Pet. Guar. Tr. Co. v. So.	2.00
15	To docket fee Guar. Tr. Co. v. K. C. So.—petition	2.00
220	To J. M. Orr, Steno., 50 folios transcript	$ 15.00
	To R. J. Holmden, Steno. per statement	10.00
17	To Brown et al Steno. part pet. v. Southern	7.50
	To Brown et al Steno. exc. rendered Mr. Macartney	19.50
	Stenographic services 20-22	.50

31	To telephone Chicago	2.50
31	To Riley Pub. Co. cross bills Cambria case	42.75
	Total	$ 119.93

(Paid J. C. Rosenberger 4-3-05)

Statement C.

Kansas City April 14, 1905.

H. S. Mouriney,
to J. C. Rosenberger, Dr.

To Cash advanced:

1905		
3-27	To R. J. Holmden petition Guar. Tr. Co. v. Southern	2.50
28	To costs	2.00
	To telegram—St. Louis—3/15	.67
4- 1	To telegram—Chicago	.54
	To telegram—Chicago 3-3	.30
	To telegram—Chicago	.54
	To telegram—Harris Champaign	.60
10	To MacDonald—copy Knott letter	25.00
11	To F. B. Wilcox	30.00
14	To telephone to Chicago	2.75
		$67.10

(Paid 4-22-05)

Statement D.

Kansas City, July 10, 1905.

H. S. Mouriney
to J. C. Rosenberger, Dr.

(Expense Account)

Cash Advanced:

4-21	To express charges on papers	.35
4-27	To index to record Cambria case	2.45
4-27	To copy decree foreclosure—Provident case	15.50
4-27	To copy affidavit to T. L. Chadbourne	1.65
4-27	To R. J. Holmden, stenographer	40.00
4-27	To copy adoption contract and affidavit of Neal S. Dorsa	2.15
5-1	To telegram to Champaign	.30
5-1	To R. J. Holmden, stenographer, part amended petition Kansas City Southern	1.50
5-23	To express charges	.35
5-23	To telegram Chicago	.28
5-23	To express charges	.45
5-23	To F. M. Cook clerical services—classifying vouchers and assisting S. B. Wiley	13.00

6-1	To express charges	.25
6-7	To Thomas E. Monroe for trunk	5.00
6-9	To express charges on Vols. 18, 19 and 20	.50
6-16	To telegram, Chicago	.30
6-19	To two weeks salary paid Cook for assisting Willey	24.00
6-21	To drayage on record	.25
227		
7-6	To F. M. Cook 2 Weeks salary to 7-1-05	$ 24.00
7-7	To W. U. Telegraph	.40
7-7	To Postal Tel. Co.	1.00
7-10	To check	24.00
7-11	By error in bill 4-14-05	$99.65
		.10
	Bal. Due	$99.55

(Paid J. C. Rosenberger 7-14-05)

Statement E.

Kansas City, Sept. 14, 1905

H. S. Mecartney
to J. C. Rosenberger, Dr.

7-15	To check, salary of F. M. Cook 2 weeks to this date	$ 24.00
7-22	To check to D. W. Amram of Philadelphia, for certified copy of bill of complaint of K. C. So. v. Reorg. Comm. to enjoin Degnijen settlement	12.75
8-8	To check to D. W. Amram, Atty. for obtaining certified copy of bill of complaint of K. C. So. v. Reorg. Comm. and for examining court files	10.00
8-2	To check, salary of F. M. Cook, 2 weeks to 7-30	24.00
7-8	To telegram to Mecartney, Chicago	.30
7-19	To telegram to Mecartney, Chicago	.25
8-12	To check of F. M. Cook, salary 2 weeks to date	24.00
8-17	To bill of A. D. Flinton for 4 days search in sub-cellar of the Nat'l Bank of Commerce among records of the year 1899, for book containing record of drafts drawn by the K. C. Sub. Belt on J. Degnijen, Jr. and testimony in regard to same	20.00
7-11	To transfer Co. from 7th and Wyandotte to 11th and Grand	.35
7-17	To Transfer Co. from 402 N. Y. L. Bldg.	.35
8-18	To hurry messenger boy note to H. A. Jetmore	.35
8-26	To hurry messenger boy note to H. A. Jetmore	.35
9-2	To F. M. Cook for services to date	15.00
9-7	To Postal Te. Cab. Co. cablegram to Kuhn & Co., London	10.20
9-9	To F. A. Wright by my check on acct. services as accountant	200.00
9-9	To Neal S. Doran by my check covering his bill of expert services	180.00
9-9	To check to Ida E. Ladd, stenographer	15.15
	Total	$ 603.15

7-14	By credit Balance	$25.00	
9-18	By part proceeds Macartney check dated 9-7-05 for $750 balance of $300 applied on service account	450.00	475.00
	Balance due,		$ 134.76

(Paid J. C. Rosenberger, Sept. 30, 1905).

Statement F.

Kansas City, November 13, 1905

H. S. Macartney
to J. C. Rosenberger, Dr.

To Cash advanced:

9-16	To check to F. M. Cook, salary	24.00
9-16	To check to R. J. Jetmore, stenographer	2.00
9-21	To certified copies of judgment in First National Bank case and replevin suit for steel rails	2.00
22S		
9-28	To docket fees to Jordan, Clerk, U. S. Circuit Court Appeals, docketing appeal for injunction	$ 25.00
9-30	To expense F. M. Cook, drayage on books	.70
9-30	To check, to F. M. Cook, salary	24.00
10-6	To check to Clerk U. S. Circuit Court of Appeals printing record	547.00
10-14	To check to F. M. Cook, salary	24.00
10-30	To check to F. M. Cook, salary	24.00
11-1	To check to H. P. Wright, witness fees	75.00
11-2	To check to Francis A. Wright, account	800.00
11-2	To drayage on books,	.75
10-5	To telegram to Macartney	.40
11-13	To railroad fare to Chicago and berth	15.00
11-13	To railroad fare Aurora to K. C. and berth	14.20
11-13	To three meals en route	2.75
11-13	To incidental expenses	4.25
		$1284.81

10-6	By check	$547.00	
11-6	By check	$575.00	1122.00
	(Paid 11-22-05 J. C. Rosenberger).		162.81

Statement G.

Kansas City, December 28, 1905.

H. S. Macartney
to J. C. Rosenberger, Dr.

11-24	To check to F. M. Cook, salary to Nov. 1st	6.00
12-1	To check to R. J. Holmden, stenographer, letters to Sullivan & Cromwell	2.00

11-19	To telegram to Mr. Mecartney	.50
12-7	To check to Mr. L. Heynecker for cablegram to Holland	7.00
11-9	To telegram to Mr. Mecartney	.30
12-16	To check to Adelaide Utter, Ct. Clerk for certified copy of order	3.35
12-16	To express on papers from New York	1.50
12-16	To salary F. M. Cook to date, replacing vouchers	12.00
12-16	To traveling expenses trip from K. C. to Chicago, Detroit and N. Y. 12-7 to 12-16-05,	178.50
12-14	To bill of J. J. Linton, N. P. Detroit, for taking deposition R. B. Cone	20.00
12-28	To check to Sullivan & Cromwell, acct. depositions	150.00
		$ 381.24

Credits:

12-9	By cash	$300.00
12-17	By cash	20.00
12-18	By cash	100.00
		$421.00
Credited by bal. $39.76, Total Debits		381.24

Statement H.

Kansas City, January 3, 1906.

H. S. Mecartney
to J. C. Rosenberger, Dr.

1-3-06	To express on papers,	$ .50
1-3-06	To check, to Mrs. Jennie Turner Powers, Shorthand Reporter, 32 Nassau Street, N. Y.	65.20
		65.70
	Credited by bill heretofore rendered.	38.76
	Balance due,	$26.94

320

Statement I.

Kansas City, February 21, 1906.

H. S. Mecartney
to J. C. Rosenberger, Dr.

Cash disbursements as follows:

12-5	To teleg. to Hawkes, N. Y.	$ .50
12-6	To teleg. to Chicago	.30
12-6	To teleg. to Chicago	.30
12-27	To teleg. to Mrs. Powers, N. Y.	.50
12-27	To teleg. to Sullivan & Cromwell	.24
12-28	To teleg. to Mrs. Powers	.50
12-4	To teleg. from Sullivan & Cromwell	.36
1-3	To express on papers	.50
1-3	To check to Mrs. Turner-Powers, N. Y.	65.20

1-4	To teleg. from Mr. Rosenberger, N. Y.	.62
1-5	To teleg. from McCormick	.62
1-12	To check to L. E. Taliaferror, typewriting (Copying)	10.00
1-15	To amt. paid Mr. Jennings, Steno. Answer and Pleas to 2nd Amended and supplemental ancillary bill	2.00
1-13	To express charges Vol. 47	.75
1-25	To check R. J. Golmden, stenographer	3.00
2-2	To Hurryup Transfer Co.	.75
2-5	To check to F. M. Cook, services searching for vouchers, etc.	2.50
1-5	To telegram to Powers, N. Y.	.30
1-5	To telegram to Chicago	.30
1-9	To telegram to Powers, N. Y.	.30
1-9	To telegram to Chicago	.32
1-4	To telegram from Powers, N. Y.	.50
2-8	To check to Fidelity Trust Company, acct. bill Francis A. Wright	100.00
	Total	$ 191.57

Credits			
	By bill heretofore rendered	$38.76	
	By check January 24th, 1906	100.00	138.76
	Balance due		$ 52.81

(Paid J. C. Rosenberger 3/1/06)

Statement J.

Kansas City, May 8, 1906.

H. S. Mecartney
to J. C. Rosenberger, Dr.

To cash advanced:

2-22-06	To charges on record	1.40
2-24-06	To Franklin Hudson Pub. Co.	17.00
2-26-06	To Miles F. Powers N. P. New York	10.00
2- 1-06	To Franklin Hudson Pub. Co. transfer	.25
3- 3-06	To check to Fidelity Tr. Co. F. A. Wright Acct.	158.00
3- 5-06	To check to Wulser Contracting Co. for cabinet	10.00
3-15-06	To 1 Mos. rent typewriter for abstracting	1.50
3-15-06	To check to Franklin Hudson Pub. Co.	12.00
3-15-06	To Hurryup Transfer Co.	.50
3-21-06	To Frank T. Riley ptg. for printing answer and pleas to 2nd Amended and supplemental ancillary bill	9.10
3-24-06	To Franklin Hudson Pub. Co.	11.00
3-26-06	To check to Miss Myrtle Christine, Stenographer abstracting record	12.60
4-2-06	To check to Fidelity Trust Co. account F. A. Wright	100.00

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4- 6-06	To check to R. B. Cone, N. Y.	$ 25.00
4-10-06	To Adelaide Utter, copy record entries in cases No. 2464 and 2468	4.50
4-12-06	To check to Adelaide Utter, Clerk, for certified copy of petition Case No. 2464, ordered by Mr. Jetmore	.95

4-15-06	To expense trip to Hinsdale		1.11
5- 2-06	To check to Franklin Hudson Pub. Co.		5.25
		Total	$380.16
3- 3-06	By check	$183.00	
4- 2-06	By check	100.00	283.00
		Balance	$ 97.16

(Paid 5/19/06 J. C. Rosenberger)

Kansas City, August 1, 1906.

H. S. Mecartney
to J. C. Rosenberger, Dr.

Cash Advanced:

4-24-06	To telephoning to Excelsior Springs	$ .20
6- 6-06	To check to G. F. Sheritt., copy of report of sale and order confirming sale case No. 7842	4.00
5-18-06	To check to I. L. Broadwin, N. Y. in re N. Y. depositions	15.00
5- 7-06	To telegram to Chicago,	.54
5- 9-06	To telegram to St. Paul	.62
	To telegram to St. Paul	.50
	To telegram to Chicago	.46
	To telegram to Chicago	.53
6- 2-06	To check to Miss Utter, clerk, copy petition and order, notice, etc.	7.25
6- 7-06	To check to L. M. Parry, Stenographer	1.95
5-31-06	To telegram from Jordan, clerk	.50
5-15-06	To telegram to Mr. Mecartney	.50
5- 7-06	To telegram to Hinsdale	1.31
5- 8-06	To telegram to Chicago	3.05
6-30-06	To check to R. J. Holmdem, work on petition in suit filed 7-2-06	1.00
7- 2-06	To docket fee suit Gr. Tr. Co. v. K. C. So.,	5.00
6- 4-06	To telegram N. Y. Mr. Mecartney	.80
6-16-06	To telegram to Mr. Mecartney, Chicago	.30
6-18-06	To telegram to Chicago	.46
6-26-06	To telegram to Chicago	.56
6-28-06	To telegram to Lloyd, N. Y.	.77
7-13-06	To funds advanced B. W. Lightburn, stenographer, services in Trust Co. argument	50.00
	Total	$ 96.30
7-30-06	By check from John D. Jordon, Clerk U. S. Circuit Court of Appeals, refund on costs, in K. C. S. Injunction appeal,	45.70
	Balance	$ 50.60

(Paid 8-20-06 J. C. Rosenberger).

Statement L.

Kansas City, December 18, 1907

H. S. Mecartney
to J. C. Rosenberger, Dr.

1907			
Jan. 2nd	To book case for Judge Douglass	$	10.00
Jan. 19	To car fare and messenger boy		.50
331			
Jan. 11	To telegram	$	.62
Jan. 12	To telegram		.50
Jan. 13	To telephone to Hinsdale		2.75
Feb. 20	To carrying books to Judge Douglass' house		.50
May 29	To telegrams to Mecartney		.52
May 31	To telegrams to Mecartney		.40
July 10	To check to George H. Roberts for drawing replies State Court cases		1.00
Dec. 2	To check to Quick Service Writing Co. for three Copies Supplemental Bill for injunction of K. C. S. et al. in Cambria Case		5.70
July 23	To Quick Service Writing Co. for three copies of brief in Guardian Trust Case		3.90
Nov. 27	To check to E. L. Mendenhall for printing brief on intervention of K. C. Southern		59.60
Nov. 27	To cash advanced for expense trip to St. Louis and return 11-25 at 11:45 P. M. to 8:00 P. M. 11-27		18.75
Dec. 7	To telegram to Mecartney, Hinsdale, Illinois		.83
Nov. 23	To telegram from Jones, St. Louis		.35
Nov. 25	To telegram to Jones, St. Louis		.35
Dec. 14	To check to Oscar Hochland for copy of proceedings ordered by Mr. Mecartney		4.50
		$	110.86

(Paid 1-29-08, J. C. Rosenberger)

Statement M.

Kansas City, April 17, 1908

H. A. Mecartney
to J. C. Rosenberger, Dr.

Cash advanced for expenses in Guardian Trust Company cases to date.

1907			
Dec. 21	To check to A. Utter, for two copies of appearance Docket Entries in case No. 2468	$	5.00
1908			
Feb. 22	To certified copy of petition of T. T. Crittenden for permission to transfer certain real estate and order of temporary injunc.,		2.25
Feb. 25	To certified copy of order overruling demurrer and order of temporary injuc.		.95
Feb. 28	To certified copy petition and application of Crittenden, Receiver, for instructions as to management of property		2.05

Feb.	29	To certified copy of order appointing Crittenden receiver, Central Imp. Co.	.85
Mar.	2	To certified copies of order denying motion to dissolve injunction, and order striking motion of G. T. Co. from files	1.40
Mar.	12	To check to Thomas S. Ridge for bond for costs on appeal	5.00
Mar.	21	To check to R. J. Holmden, stenographic services in preparing memo for J. C. R. and H. S. M.	7.00
Mar.	24	To Quick Service Writing Co., stenographic services in copying letters	1.25
Mar.	21	To check to Miss Thompson, stenographic services	2.50
		Total	$ 28.25

(Paid 5-18-08 J. C. Rosenberger)

In the Circuit Court of Jackson County, Missouri, at Kansas City, Harry S. Mecartney, Plaintiff v. The Guardian Trust Company, Defendant, Case No. 38412.

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332 'Exhibit 4'

Referred To In The Second Count Of And Annexed To The Petition In Said Cause.

March 27, 1908.

Guardian Trust Company
to
Harry S. Mecartney, Dr.

Cash Disbursements
Trimble & Braley Matter.

1906			
Jan.	30	Telegram to Kansas City	$ .34
Feb.	24	Telegram to Kansas City	.44
June	28	Express on package to Kansas City	.60
July	10	Expenses to K. C. and return	35.00
Aug.	22	Telegrams to Kansas City	.70
Aug.	27	Expenses to K. C. R. R. ticket $12.50; Berth $5.50; Meals on train $2.50; Hotel and other expenses, $11.20; Part mileage ticket no previously charged $9.16	40.86
Sept.	8	Expressage on package	.75
Sept.	19	Expressage on package to K. C.	.75
Aug.	25	Postage on briefs	.54
Oct.	9	Telegrams	.65
Oct.	9	Express on documents	.60
Oct.	9	Expense to K. C. R. R. Expense above mileage $5.69; Berths, Meals and hotels $12.20	17.89
Sept.	27	To Barnard & Miller, Printers 'Final Suggestions for Dft.' 65 copies	60.00
Oct.	3	Telegrams	1.03
Dec.	8	To Todd D. Denham, Court Reporter	14.25
Oct.	23	To Barnard & Miller, 'Props of Law'	17.25
Nov.	27	Telegrams	.72
Nov.	27	To sundry telegrams	3.60
Nov.	27	Stenographic expenses at K. C.	2.30

1907			
Sept.	28	To expenses K. C. and return, 3 days 'and mileage ticket)	68.20
Oct.	4	To expenses 2 days	16.70
Oct.	24	To Sterling Post Binder for files	1.75
Oct.	26	To expressage to Kansas City	1.00
Nov.	1	To special stenographers, Abs. of record	55.85
Dec.	2	To Miss Outwatre, Court Reporter, Arguments, Harkless, Mecartney & Eaton	50.40
Dec.	18	To Barnard & Miller, Printing 'Further Arguments Defense'	40.00
			$433.07

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Amended Answer

In the Circuit Court of Jackson County, Missouri, at Kansas City, Harry S. Mecartney, Plaintiff vs. Guardian Trust Company, Defendant, No. 38412.

I.

For its amended answer to the first count of plaintiff's second amended petition, this defendant admits that it is a corporation organized and existing under the laws of
333 the State of Missouri, and denies each and every other allegation in said first count in said second amended petition contained.

Wherefore, having fully answered, it prays that it may go hence without day, and have judgment for its costs.

II.

For second and further answer to the first count of plaintiff's second amended petition, the defendant says, that the plaintiff was employed by defendant as its attorney to represent it in certain litigated causes denominated by the plaintiff the 'Belt Litigation' or the 'Suburban Belt Litigation', and also in certain other litigated causes, called by the plaintiff the 'Channel & Dock Case.'

That the amount of plaintiff's compensation for his services in said two causes, was fixed and agreed upon by his written representation to this defendant, dated December 6th 1904, to the substance and effect that if said causes should be settled before final decree, plaintiff's fees would run from ten thousand ($10,000.00) dollars to fifteen thousand ($15,000.00) dollars, and if fought through to final decree, and through the court of appeals, they might run up to twenty-five thousand ($25,000.00) dollars.

Defendant states that it relied upon said written representations as a part of the contract of employment of said plaintiff, and that it paid plaintiff more than the amount provided for in said written representations.

Wherefore, having fully answered, this defendant prays that it may go hence without [delay] and have judgment for its costs.

III.

For third and further answer to the first count of plaintiff's second amended petition, the defendant says that it has paid plaintiff the amounts stated in said first count and more, and that said payments were greatly in excess of the reasonable value of all services rendered by him to it.

334 Wherefore, having fully answered, this defendant prays that it may go hence without day, and have judgment for its costs.

IV.

For fourth and further answer to the first count of plaintiff's second amended petition, defendant says that the plaintiff so negligently and unskillfully and improperly conducted the business of this defendant entrusted to him as its attorney, that his services were of no value to the defendant.

Wherefore having fully answered the said first count, this defendant prays that it may go hence without day, and have judgment for its costs.

I.

For its amended answer to the second count of plaintiff's second amended petition, this defendant admits that it is a corporation organized and existing under the laws of the State of Missouri, and denies each and every other allegation in said second count of said second amended petition contained.

Wherefore, having fully answered, defendant prays that it may go hence without day, and have judgment for its costs.

II.

For second and further answer to the second count of plaintiff's second amended petition, the defendant says that it has paid plaintiff the amounts stated in said second count, and more, and that said payments were greatly in excess of the reasonable value of all services rendered by him to it.

Wherefore, having fully answered, this defendant prays that it may go hence without day and have judgment for its costs.

III.

For third and further answer to the second count of plaintiff's second amended petition, defendant says, that the plaintiff so negligently and unskillfully and improperly conducted the business of this defendant entrusted to him
335 as its attorney therein, that his services were of no value to the defendant.

Wherefore having fully answered said second count, this defendant prays that it may go hence without day, and have judgment for its costs.

GATES & ENGLISH,
Attorneys or Defendant.

Plaintiff's reply was as follows:

Reply.

In the Circuit Court of Jackson County, Missouri, at Kansas City, January Term, 1911, Harry S. Mecartney, Plaintiff, vs. Guardian Trust Company, Defendant, No. 38412.

I.

Now comes plaintiff and for reply to defendant's amended answer to first count of plaintiff's second amended petition denies each and every allegation therein contained.

Wherefore, plaintiff prays judgment.

II.

Now comes plaintiff and for reply to defendant's amended answer to second count of plaintiff's second amended petition denies each and every allegation therein contained.

Wherefore plaintiff prays judgment.

REED, YATES, MASTIN
& HARVEY,
CHAS. M. BUSCH,
COWHERD, INGRAHAM,
DURHAM & MORSE,
Attorneys for Plaintiff.

(The recitals appearing on page 56, including the order appointing Referee, are in words and figures as follows, to-wit:

"On the 24th day of January, 1911 Term, the same being February 4th, 1911, plaintiff filed a motion to refer this cause to a referee, as appears by a record entry made at the time.

On the 24th day of the January 1911 term, the same being February 4th, 1911, plaintiff's motion for the appointment of a referee came on to be heard, and thereupon the court made the following order, as appears by record entry made at the time:

336 Order Appointing Referee.

'Now on this day come the parties and plaintiff's motion for the appointment of a referee having been taken up and considered, the court doth sustain the same, and upon the consent of the parties the court doth appoint Hon. Henry L. McCune, of Kansas City, Missouri, referee herein to hear and determine all issues of fact and law in this cause and to report his findings of fact and conclusions of law thereon to the court.'

Afterwards on the first day of the November, 1913, term, the same being November 10th, 1913, the Honorable H. L. McCune, Referee, filed his report together with the testimony taken before him as such referee, as appears by record entry at the time. Said report together with said testimony appears in the bill of exceptions to which reference is hereby made.

On the 4th day of the November, 1913, term, the same being November 13th, 1913, defendant filed exceptions to the Referee's report, as appears by record entry made at the time.

On the 5th day of the November, 1913 term, the same being November 14th, 1913, the plaintiff filed exceptions to the Referee's report, as appears by record entry made at the time.

Said exceptions of defendant and of plaintiff appear at length in the bill of exceptions to which reference is hereby made.

On the 49th day of the November 1913 term, the same being January 8th 1914, said cause was assigned to Division No. 5 of said court for the purpose of hearing and passing upon all matters in said cause, as appears by record entry made at the time.

(The recitals appearing on page 57, including the judgment of the Circuit Court, appearing on page 57, are in words and figures as follows, to-wit:

"Afterward, on the 15th day of the September, 1914 term, the same being the first day of October, 1914, the following proceedings were had and made of record before the Honorable Frank G. Johnson, Judge of Division No. 5, of said cause, the record entry being in words and figures as follows, to-wit:

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'Now on this day the court being fully advised in the premises and having read and considered the evidence and the arguments and briefs of counsel doth sustain the exceptions of plaintiff to the report of the referee herein and doth set aside the said report of the referee herein and doth set aside the said report and the findings of the referee.

And the court upon the evidence doth find the issues made by the first count of plaintiff's petition in favor of the plaintiff, and doth find that the balance due to the plaintiff from defendant with interest thereon from March 28, 1908, to this date upon the first count of his petition is the total sum of $111,046.11.

And the court upon the evidence doth find the issues made by the second count of plaintiff's petition in favor of plaintiff and doth find that the balance due to the plaintiff from defendant with interest thereon from March 28, 1908, to this date upon the second count of plaintiff's petition is the total sum of $4,778.46, making the total sum of $115,824.57, in which the defendant is indebted to the plaintiff on said first and second counts of his petition.

Wherefore, it is considered, ordered and adjudged that plaintiff have and recover of and from the defendant said sum of $115,824.57, with interest thereon at the rate of six per cent per annum from this date, together with his costs in this behalf incurred and expended and that execution issue therefor.

To which judgment and decision of the court, defendant excepts.

The court files memorandum opinion.'

On the 18th day of September, 1914, term, the same being October 5, 1914, and within four days after the rendition of the judgment hereinbefore set forth, the defendant filed a motion for new trial, as appears by record entry made at the time.

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On the 19th day of September, 1914 term, the same being October 6th, 1914, and within four days after the

rendition of the judgment hereinbefore set out, the defendant filed a motion in arrest of judgment, as appears by record entry made at the time.

On the 43rd day of September, 1914, term, the same being November 5, 1914, the following proceedings were had and made of record, the record entry being in words and figures as follows, to-wit:

Modified Judgment.

'Now on this day counsel for defendant having heretofore on November 4, 1914, upon the argument of the motion for a new trial herein, complained that the court did not by its judgment entered herein at the present term, to-wit: on October 1, 1914, expressly rule upon the exceptions of the defendant to the referee's report, and having companeled that thereby the defendants were deprived of the opportunity to preserve their objections and exceptions to the action of the court, and the court having at the time of said judgment fully considered all of defendant's said exceptions to the referee's report, and the court having deemed that the court by sustaining plaintiff's exceptions and by setting aside the referee's report and by rendering said judgment had by necessary implication overruled said exceptions of the defendant, and said judgment having been rendered at this the regular September 1914 term of this court.

Now therefore, in order that the record entry of said judgment may clearly express the decision of the court, it is now by the court, of its own motion, ordered that the record entry of said judgment entered herein at this term, to-wit: on October 1, 1914, be and the same is hereby amended by inserting therein after the word 'doth' where said word first occurs, the following language, to-wit, 'overrule the exceptions of defendant to the report of the referee, to which action and ruling of the court the defendant excepts and doth,' so that the judgment as correct shall read in words and figures as follows, to-wit:

339 'Now on this day, the court being fully advised in the premises, and having read and considered the evidence and the arguments and briefs of counsel doth overrule the exceptions of defendant to the report of the referee, to which action and ruling of the court, the defendant excepts and doth sustain the exceptions of plaintiff to the report of the referee herein and doth set aside the said report and the findings of the referee.

And the court upon the evidence doth find the issues made by the first count of plaintiff's petition in favor of the plaintiff and doth find that the balance due to plaintiff from defendant, with interest thereon from March 28th, 1908, to this date upon the first count of his petition is the total sum of $111,046.11.

And the court upon the evidence doth find the issues made by the second count of plaintiff's petition in favor of the plaintiff and doth find that the balance due to the plaintiff from the defendant with interest thereon from March 28th, 1908, to this date upon the second count of plaintiff's petition is the total sum of $4778.46, making the total sum of $115,824.57, in which the defendant is indebted to the plaintiff on said first and second counts of his petition.

Wherefore, it is considered, ordered and adjudged that the plaintiff have and recover of and from the defendant said sum of $115,824.47, with interest thereon at the rate of 6% [per cent] per annum from this date, together with his costs in this behalf incurred and expended and that execution issue therefor.'

Mr. Rosenberger: I now offer in evidence the opinion and decisions of the Supreme Court of Missouri in the case of Harry S. Mecartney, respondent, vs. Guardian Trust Company and Henry C. Flower, its Receiver, reported in Volume 274 Missouri Reports, at page 224.

Mr. Smith: Now I object to the opinion of the Supreme Court for the same reasons as we objected to the judgment, and we ask the right to offer in evidence the same evidence that we offered in support of our objections to the judgment.

Mr. Rosenberger: We object to the introduction of
340 any evidence at this time.

The Master: You will have the opportunity to introduce that evidence later. I think it will be more orderly not ot introduce it at this time.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Thereupon the opinion of the Supreme Court of Missouri in Mecartney vs. Guardian Trust Company, 274 Mo. 224 was received in evidence by the Master.

(Said opinion, as reported in 274 Mo. 224, is hereby, pursuant to stipulation of the parties, incorporated herein by reference, in lieu of being herein set forth.)

CHARLES A. BRALEY, being produced as a witness on behalf of the Guardian Trust Company, first duly sworn, testified in substance as follows:

"My name is Charles A. Braley. Since 1886, up to about ten years ago, I was a practicing attorney in Kansas City, Missouri. Since then I have not been in the general practice. While I was in active practice, I was a partner of Judge J. McD. Trimble up to within above five years before his death which was about 1918 or 1919. I was his partner at all times from the year 1896 up to the said 1912. We were practicing under the name of Trimble & Braley. Dobson & Douglas were attorneys for the Guardian Trust Company for about the first two years of its existence and thereafter Trimble & Braley represented it up to about the year 1899. The Trust Company was organized in about 1887. For a year or two prior to the appointment of Judge Black as Receiver of the Guardian Trust Company, after the company established a branch in Chicago, our firm was not general counsel for the company but it was, I think, represented as general counsel by
Thomas I. Chadbourne at Chicago, but matters per-
341 taining to Missouri affairs were referred to our office.
Chadbourne became general counsel about 1899. I recall the occasion of the appointment of Judge Francis M. Black, as Receiver of the Guardian Trust Company by Judge Thayer, on Nov. 30, 1900. Upon that appointment, Judge Trimble and I became counsel for Judge Black as receiver of the company. I recall the filing of the suits by the Cambria Steel Company and the Provident Life & Trust Company on Sept. 5, 1900. Wash Adams was appointed Receiver as successor to Judge Black who died during the receivership in May, 1902, and on Oct. 4, 1902, Judge Thayer entered an order discharging Wash Adams as Receiver and returning the Trust Company to the management of its own directors with some restrictions. During the period of Judge Black's receivership and the receivership of Wash Adams, Judge Trimble and I and those associated with us, were employed to protect the interests of the Guardian Trust Company in the Cambria Steel Company litigation and its allied litigations here in the United States Court. John A. Eaton, Dudly Eaton, Hyden Eaton and Robert Silvers were associated with us in conducting those proceedings on behalf of the Trust Com-

pany in the first part of the litigation. When Wash Adams was discharged as Receiver and the receivership was lifted, Judge Thayer made an allowance to Judge Trimble and myself for our services to Judge Black as Receiver. He made some allowance, I cannot tell just the exact figures.

Mr. Rosenberger: Handing you Trust Company voucher No. 146, I will ask you to examine it.

Mr. Braley: I have examined it.

The Master: That is not your item number in this account.

Mr. Rosenberger: No, that is the voucher number. This deals with Item No. 82. Your and Judge Trimble's receipt is attached to that voucher, is it not?

Mr. Braley: It is.

Mr. Rosenberger: And you and Judge Trimble received the sum of $7,125.00 as stated in the voucher?

242 Mr. Smith: I object to that question. The Kansas City Southern Railway Company and the Cambria Steel Company objected to any and all evidence in support of Item No. 82 on the grounds set forth in numbered paragraphs 1 to 7, inclusive, 9 and 10 of their written statement of objections and on the further ground because it is apparent on the face of the charge, that the Guardian Trust Company and its receiver are attempting to make their own apportionment in the amount of such expenses to be charged in this litigation and in support of said objections, said parties ask leave to offer evidence, documentary and oral, for the purpose of showing that the services covered by said item included services foreign to this litigation and upon issues on account of which costs as between solicitor and client may not be taxed, if they may be taxed on any issue, and were excessive. The written statement read into evidence in support of the objections to the introduction of voucher No. 146, covering Item No. 82, apply also to any and all other evidence in support of said item.

Said objections were, by the Master, overruled, and said offer of proof denied, to which ruling said parties duly excepted.

The Master: The Master does not quite understand why you are asking for three-fourths of that amount.

Mr. Rosenberger: On the basis of three-fourths of their time given to this litigation.

Mr. Smith: We object to the voucher and item, on the ground that it shows on its face that the Trust Company is here attempting to apportion the amount of the award without having any hearing on the facts, making their own arrangement and not giving us any day in court on the merits.

Mr. Rosenberger: That is what we are having now, a hearing on the facts.

The Master: Wait a moment: Is that an objection to the voucher? The voucher has already been introduced and now is that an objection to the testimony of Mr. Braley?

Mr. Smith: I am just making that objection to the
343 answer to your question, what he stated; the objection to the vouchers appearing in the written objection.

The Master: The objection will be overruled at this time.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Mr. Braley: During the period of that receivership between Nov. 30, 1900 and Oct. 4, 1902, Judge Trimble's time and Dudley Eaton's and for a small time, the time of Robert Silvers and myself was almost exclusively used in the prosecution, on behalf of the Guardian Trust Company, of its claims against the Belt Company and the Southern Company, and to the defense of the claims that were being asserted against it by the Southern Company and various other parties to that litigation. We were called upon and required to prepare very extensive defenses and defensive pleadings to various demands that were being asserted against the Guardian Trust Company by the Cambria Company and by the receivers of the Belt Company and by the various subcompanies that were parties to the suit. Judge Trimble, John Eaton and Dudley Eaton gave nearly all of their time, if not all, to that litigation and Robert Silvers, during his connection with the firm, gave more or less time but we were looking after more local business.

Mr. Rosenberger: Well, what proportion of the services compensated for by that allowance of $7,125.00 in your opinion is fairly to be said to be applicable to services rendered by Judge Trimble and your firm in representation of the Guardian Trust Company in this Cambria litigation?

Mr. Smith: That question, if your Honor please, is putting Mr. Braley in the position of judge and jury and witness, without giving us any facts on which to base the question at all. Just ask him to state what percentage or what proportion of the time was given without any inquiry as to what was done or what issues were involved in this matter or what law suits is taking from us any opportunity
344 to try out the issue of the value of those services and on what issue services were rendered and what the worth of them.

The Master: The objection is overruled. I take it Mr. Braley knows what he is talking about and what time he was giving to it and the time these other men were devoting to this litigation.

To which last ruling and action of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Mr. Braley: At least three-fourths of the time; I should say more.

Mr. Crane: What date does that embrace?

The Master: November 30, 1900 to Nov. 4, 1902.

Mr. Rosenberger: I now [feal,] if your Honor please, with Item 81, reading as follows: "To amount paid Trimble & Braley, attorneys, as retainer fee in Cambria Steel Company case, $1000.00).

The Master: What is the date of it?

Mr. Rosenberger: September 22, 1900.

Mr. Rosenberger: Mr. Braley, I will ask you to state whether your firm was employed to represent the Guardian Trust Company in this Cambria Steel litigation prior to the appointment on November 30, 1900, by Judge Thayer of Judge Black as receiver?

Mr. Braley: We were.

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction of any testimony in support of Item No. 81 of the account on the grounds set forth in numbered paragraphs 1 to 7, inclusive and 9 of their written statement of objections and in support of their objections, asked leave to offer evidence, for the purpose of showing that the services covered by said item, included services foreign to this litigation. The written state-

ment read into the record in support of the objections to Voucher No. 146, covering Item No. 82, applied also to any evidence in support of Item 81. Said objections were,
345 by the Master, overruled, and said offer of proof denied, to which rulings said parties duly excepted.

Mr. Braley: Our firm was employed to represent the Guardian Trust Company in this Cambria Steel litigation prior to the appointment of Judge Black as Receiver, by Judge Thayer, on Nov. 30, 1900. Refreshing my recollection by examining a bill annexed as exhibit to the original petition in suit No. 25346, in the Circuit Court in this county, entitled Trimble & Braley vs. Guardian Trust Company, I can testify that we received a retainer fee of $1,000.00 on Sept. 25, 1900, paid us by the Guardian Trust Company in that litigation.

Mr. Rosenberger: I now deal, Mr. Master, with the items numbered on the account 83 to 107, inclusive, being salary items paid Judge Trimble during the period October, 1902, to October 25, 1904, inclusive.

Thereupon the Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction of any testimony in support of items No. 83 to 107, inclusive, on the grounds set forth in numbered paragraphs 1 to 7, inclusive, 9 and 10 of their written statement of objections, and in support of said objections, asked leave to offer evidence for the purpose of showing that the services covered by such items included services foreign to this litigation, and upon issues on account of which costs as between solicitor and client may not be taxed, if they may be taxed on any issue, and were excessive. The written statement read into the record in support of the objections to voucher No. 146, covering item No. 82, apply also to evidence in support of Items 83 to 107, inclusive. Said objections were, by the Master overruled, and said offer of proof denied, to which ruling, said parties duly excepted.

Mr. Braley: I cannot say whether the record shows that immediately upon the discharge of Wash Adams as Receiver, on Oct. 4, 1902, our firm or Judge Trimble for our firm, was employed as general counsel of the Guardian Trust Company but he represented the company and took care of
346 its affairs in this Cambria suit. I do not recall being present at a meeting of the Board of Directors of the company held on Oct. 22, 1902, the minutes of which seem to recite my presence, and that Judge Trimble was elected to

the office of general counsel, but I know he took charge of their affairs after the discharge of the receivership.

Mr. Rosenberger: I also call attention to this portion of the minutes of the same meeting (page 2031 of volume 3 of the Shedd record): "The question of proper compensation to the officers of the company for their services for the succeeding year was brought up for consideration. Whereupon, upon motion of Mr. Bradbury, seconded by Mr. Shedd, the president appointed the following committee to consult with the officers elect and agree upon the compensation to be allowed and to report the result thereof to this meeting. The committee as appointed by the president was composed of the following persons: G. L. Bradbury, William Waterall, and John A. Prescott. The meeting at this point rested awaiting the report of the committee. The committee returned to the meeting and made the following report, which was read by Mr. Prescott, fixing the salaries of the various officers of the company as follows. President, H. H. Harris, $500.00 per month" and so forth, including "counsel, J. McD. Trimble a $500.00 per month". With your recollection thus refreshed, if it is refreshed, you may state whether Judge Trimble's salary was $500.00 a month from the time of the lifting of the receivership up to some time in 1904?

Mr. Braley: I could not say without referring to our books.

Mr. Rosenberger: What is your best recollection on the subject?

Mr. Braley: I presume it was at least that.

Mr. Rosenberger: That is to say that is your recollection of it?

Mr. Braley: Yes, sir.

Mr. Braley: After Wash Adams was discharged as Receiver in October, 1902, the litigation involved in this
347 Cambria Steel case spread to nearly all of the railroad companies and their allies that were mentioned in the Bierce case, in which there were a great many defendants and certain plaintiffs. There was litigation in all of them after the receivership. I remember there was a case in which the defendants were the Kansas City Suburban Belt Railroad Company, the Guardian Trust Company, Northern Townsite Company, the Central Improvement Company, the Missouri Elevator and Terminal Company, Fairmount Amusement Company and in fact, all of the subsidiary companies of the

Belt Company. The litigation spread so that it involved all of the subsidiary companies. I remember the occasion of Judge Shannon C. Douglass being appointed by Judge Phillips about April 1, 1902, to take testimony on the issues made in the Cambria suit. Before the Master was appointed, I presume that the answers and pleadings were filed on behalf of the various defendants to the Cambria bill and to the ancillary bill that was filed by the Receivers of the Belt Company against the Guardian Trust Company. Our firm pressed this litigation to its final conclusion. That necessarily involved a great amount of preparation. A great amount of labor was involved in examining the accounts between these different companies and preparing them in proper shape for presentation to the Master. The transactions were very numerous and were between companies all doing business, or largely so, in or near the offices of the Trust Company. The auditor of the Guardian Trust Company and its allied companies, spent a great many days and nights getting out the accounts and statements.

348 Mr. Rosenberger: You may state whether the issues raised in this Cambria case were such as to involve an examination of the accounts of all the various parties to the suit involved.

Mr. Braley: I have a distinct remembrance of a conference on that subject, as to whether we should demur or whether we should consent to an accounting, which was pressed by the defendant. Some of the firm wished to demur. Judge Trimble took the view that the accounting was all on the books and would probably not take any longer than it would to try out the legal point on the demurrer, or some other pleading that would put the question in suit (issue). (pp. 275, 287.)

Mr. Rosenberger: Mr. Braley, I will ask you to keep in mind that the Special Master was appointed about April 1, 1902; that Judge Trimble resumed his duties as counsel for the Guardian Trust Company under its own management about December 1, 1902, and that the hearings before the Special Master Douglass began on January 15, 1903; and that between the last mentioned date and the date of his retirement from the case, about December 1, 1904, there had been one hundred and three sessions before Judge Douglass, as shown by the record in the Cambria Steel Company
349 case, at which evidence was introduced, proceedings had and that during the greater part of that time Mr. S. B. Willey was on the stand under examination and cross

examination, Mr. Willey being the auditor of the Guardian Trust Company and accountant called upon to examine the books; taking those facts into consideration and your own knowledge of the extent of preparation necessary to shape the evidence, conduct the examinations, attend the hearings, I will get you to state how much of Judge Trimble's time was engrossed, if any of it, during that period, from the time he again became general counsel at a salary of $6,000.00, about December 1, 1902, until his retirement December 1, 1904.

Mr. Smith: We object to this question for the additional reason that it calls for speculation and a conclusion. It has not been shown the witness was present at any of these hearings or that he knows what was done at those hearings and he don't know how long any session lasted or what was done in the meantime; nor can he tell absolutely what other things Mr. Trimble had or what other business Trimble & Braley had and were doing during this period for the Guardian Trust Company.

The Master: In view of the intelligence of the witness and matters he has knowledge of the objection will be overruled.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Mr. Braley: Judge Trimble and the other lawyers I have mentioned, officed in the same offices that I did and I can confidently say that during that litigation, at least three-fourths of the time of Judge Trimble. Mr. Eaton and Dudley Eaton were used and employed in the prosecution of these cases. I remember one subject in particular, that the Orient was just starting and Judge Trimble paid little attention to that. These other lawyers mentioned, associated with myself and Judge Trimble, were compensated exclusively
350 by Judge Trimble and myself. The dealings of the Trust Company were entirely with Judge Trimble. The stress upon counsel in the Cambria litigation at that time was such that Judge Trimble was obliged to employ Wash Adams to assist him. That was after the receivership. Wash Adams was actively in the case.

Mr. Rosenberger: Can you give us some idea, Mr. Braley, of the extent of the exactions on Mr. Willey, the Trust Company's auditor, in this litigation involved, and the assistance given by him before the Special Master Douglass and

preparations he made therefor in the way of financial exhibits and statements of account as between the numerous companies involved?

Mr. Smith: We object to any evidence in support of the Willey charges on the grounds set forth in numbered paragraphs 1 to 5, inclusive, and 7 of our written statement of objections, and we object to the question for the additional reason that it calls for a conclusion of this witness as to the extent of the exactions on Mr. Willey who was doing this work by himself and not in the presence or hearing of Mr. Braley, therefore, calling for his conclusion on something that must be the result purely of his inference and would be hearsay evidence.

The objections were, by the Master, overruled, to which ruling The Kansas City Southern Railway Company and the Cambria Steel Company duly excepted.

Mr. Braley: Mr. Willey was called upon to give not only day but night service in preparing these accounts. In the day time he was busy testifying before the Master and at night preparing exhibits.

Mr. Rosenberger: Mr. Braley, I wish you would look at Trust Company voucher No. 2954, $10,198.13, covering Item No. 127, the Trimble & Braley judgment, and state whose signature that is to the last portion thereof.

Mr. Smith: The Kansas City Southern Railway Company and the Cambria Steel Company object to the introduction of any testimony in support of Item No. 127 on the
351 grounds set forth in numbered paragraphs 1 to 7, inclusive, 9 and 10 of their written statement of objections and in support of said objections, ask leave to offer evidence for the purpose of showing that the services covered by said item included services foreign to this litigation and upon issues on account of which costs as between solicitor and client may not be taxed, if they may be taxed on any issue, and were excessive. The written statement read into the record in support of the objections to the introduction of voucher No. 146, covering item No. 82, applies also to evidence in support of item No. 127. Said parties objected to the voucher for the further reason that the voucher is for a lump sum and does not attempt to specify what services were rendered or whether the services were rendered in this litigation or whether they were rendered for issues to which the claims for costs between solicitor and client are being claimed or may be claimed in any event.

Said objections were, by the Master, overruled, and said offer of proof denied, to which rulings, The Kansas City Southern Railway Company and Cambria Steel Company duly excepted.

Mr. Braley: The acknowledgment of satisfaction on said voucher No. 2954 was signed by both Judge Trimble and myself and the voucher is signed by the firm name, by myself. Our firm got that money.

Mr. Rosenberger thereupon offered in evidence the original petition in suit No. 25346 in the Circuit Court of Jackson County, Missouri, in Trimble & Brailey vs. Guardian Trust Company and the exhibits thereto attached, being the petition on which said case was tried.

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction in evidence of said petition and exhibits on the grounds set forth in numbered paragraphs 1 to 7, inclusive, 9 and 10 of their written statement of objections, and in support of said objections, asked leave to offer evidence for the purpose of showing the service covered by said petition in-
352 cluded services foreign to this litigation. Said objections were, by the Master, overruled, and said offer of proof denied, to which ruling said parties duly excepted.

The petition and exhibits were received in evidence by the Master and are in words and figures, as follows:

In the Circuit Court at Kansas City, October Term, 1905.

J. McD. Trimble and C. A. Braley, Partners under the firm name and style of Trimble & Braley, Plaintiffs,

vs.

Guardian Trust Company, a corporation, Defendant.

Now comes the plaintiffs and for their cause of action against the defendant state that at the times hereinafter mentioned they were and for a long time prior thereto had been and still are licensed attorneys at law and engaged in the active practice of the profession of the law as partners under the firm name and style of Trimble & Braley, at Kansas City, Missouri, and that they were partners in the practice of their said profession during all of said times and still are such partners.

That the defendant, Guardian Trust Company, is a corporation organized and existing under and by virtue of the laws of the State of Missouri.

That at divers times from the second day of November, 1898, to the 16th day of January, 1905, the plaintiffs as such attorneys at law, at the special instance and request of the defendant, rendered to the defendant professional services in and about divers and various legal matters and litigated causes, and did during said times at the instance and request of the defendant incur, advance and pay out certain moneys at divers times and in various amounts for and on behalf of the defendant in connection with the said legal matters and litigated causes.

That the items and particulars of the said professional services, rendered by the plaintiffs to the defendant in
353 connection with said legal matters and litigated causes, will fully appear, together with the respective dates thereof, from the itemized statement hereto attached, and that the various items of expense and money incurred and paid out for and on behalf of the defendant by the plaintiffs in connection with the said legal matters and litigated causes, together with the dates thereof, will also fully appear upon the said itemized statement hereto attached.

That the charges made for each item of services by the plaintiff to the defendant, as shown upon the said itemized statement, are reasonable, and the amounts charged for in each of the said items of said services respectively were and are reasonably worth the amount so charged therefor, and the charges made in the said itemized statement for expenses incurred or money paid out by Trimble & Braley for and on behalf of defendant were actually incurred and paid out by Trimble & Braley for and on behalf of the defendant as shown by the said itemized statement.

That the defendant has at various times between November 2, 1898, and the 21st day of April, 1905, made divers payments to Trimble & Braley on account of said services and expenses, all of which payments, together with the respective dates thereof, are correctly credited and shown on the said itemized statement hereto attached.

That on the 30th day of March, 1904, there was due to the plaintiffs on account of the said services and expenses, after deducting all of the payments theretofore made on account thereof, without computing any interest, a balance of Twenty-one Thousand Three Hundred and Twenty-three and 56/100 Dollars ($21,323.56).

That on the said 30th day of March, 1904, plaintiffs duly demanded of and from the defendant the payment of the said

balance, $21,323.56, then due as aforesaid, [by] the defendant wholly failed and refused to pay the same or any part thereof

That since the said 30th day of March, 1904, and
354 prior to the 1st of January, 1905, the defendant paid to the plaintiffs, on account of the said services and expenses, seven Hundred and Ninety and 81/100 Dollars ($790.81), consisting of two payments, one made on the .....day of....., 1904, of $25.36, and the other on July 12th, 1904, of $765.45.

That since the said 30th day of March, 1904, the day when the plaintiffs made demand for the payment of the balance so due as aforesaid, the plaintiffs, at the special instance and request of the defendant, have rendered to the defendant other professional services in connection with a litigated cause, for which services the plaintiffs charged the defendant the sum of Five Hundred Dollars ($500.00) as will appear from the said itemized statement hereto attached; that the services for which said charge was made were reasonably worth the sum so charged, and since the said 30th day of March, 1904, plaintiffs have paid out for and on behalf of the defendant other and further moneys by way of expenses, the items of which will truly appear from the itemized statement hereto attached.

That afterwards, to-wit: on the 20th day of April, 1905, the defendant paid to the plaintiffs on account of their said professional services and expenses so rendered and incurred by them, the further sum of Five Hundred Fourteen and 5/500 Dollars ($514.05), for which credit was duly given, as will appear from the said itemized statement hereto attached.

That after allowing credit for all payments which the defendant has made on account of the said services and expenses, there now remains due to the plaintiffs, exclusive of interest, the sum of $20,533.25.

That the plaintiffs have frequently demanded of and from the defendant the payment of said balance so due as aforesaid, but the defendant has wholly failed and refused to pay the same or any part thereof.

Wherefore, plaintiffs pray judgment against the defendant for the sum of $20,533.25, the balance due as afore-
355 said, and also for interest at the rate of six (6) per cent per annum from the 30th day of March, 1904, until rendition of judgment, together with the costs of this suit.

EATON & LOOMIS,
Attorneys for Plaintiff.

Kansas City, Mo. March 1st, 1904.

Guardian Trust Company, to

Trimble & Braley, Dr.
Attorneys at Law,
Rooms 713-720 Bryant Building.

1898		
Nov. 2	To expense J. McD. Trimble to Chicago	$ 20.00
Dec. 17	To cash for copy of deed of trust K. S. S. & G. Terminal Co. to M K. & T Trust Co.	8.00
1899		
Mch. 2.	To cash for telegram to J. McD. Trimble from Nathaniel Norton in re claim against Lay	.98
Apr. 29	To cash for 2 telegrams Norton to C. A. Braley and vice versa in re Lay matter	1.06
Apr. 29	To cash for telegram J. McD. Trimble to W. S. Taylor	.65
May 25	To cash for Mr. Braley's expenses to examine Wentworth Nine	5.12
Apr. 1	To advice, time and services other than legal in connection sale of rice and irrigation stock including trip to Chicago to see Oliver Snow, Mansfield, Shed, Bake., Harris, et al	100.00
July 12	To cash for 3 telegrams in re purchase Cuban iron properties	2.22
July 19	To cash for 7 telegrams in re holding directors' meeting of company in Chicago and change of its name and capital	2.85
July 27	To cash for 9 telegrams account Guardian Trust Co. in re electric automobile business with Lobdell of Chicago, the collection of claim against Lay, and Chicago Zinc mine property	5.31

April, May, June & July, 1899. To all advice and services in the matter of suit of Missouri, Kansas & Texas Trust Co. as trutee of Texas & Ft. Smith Ry. Co. in U. S. Circuit Court for Eastern District of Texas, being a suit to foreclose mortgage on railroad property and secure appointment of a receiver pending the foreclosure proceedings. The services rendered include the preparation of bills of complaint, the institution of the suit, the

securing of appointment and qualification of R. A. Greer as receiver, securing delivery of pos-
356 session of the property to him, the preparation and filing of an ancillary bill in U. S. Circuit Court for the Western District of Arkansas, and securing ancillary orders for appointment of the same receiver, the subsequent negotiations resulting in the dismissal of the suit, the discharge of said receiver, and settlement of his affairs and the costs of the suit $2500.00

After the appointment of the receivers of the Kansas City, Pittsburg & Gulf Rld. Co. in the Circuit Court of Jackson County, Mo. on April 1st, 1899, it was found necessary for the purpose of operating as a continuous line and an entire system, to do so in connection with the Texas & Ft. Smith Ry. Co., the lines of which formed a part of the system, and subject to successful operation in connection with the K. C. P. & G. Rld. Co. A bill was prepared for the foreclosure of the Texas & Ft. Smith Rly. Co. mortgage and filed in the U. S. Circuit Court for Eastern District of Texas at Beaumont.

Thereupon application was made to the Hon. D. E. Bryant, Judge of said court, for the appointment of a receiver, upon which application R. A. Greer was appointed, who thereafter qualified and took possession of all property, railroad and equipment belonging to the Texas & Ft. Smith Ry. Co. and thereafter proceeded to operate the same under the order of the court appointing him in connection with the receivers of the K. C. P. & G. Rld. Upon the appointment S. W. Fordyce and Webster Withers, Receivers, suit so begun was dismissed and the receiver discharged.

An ancillary bill was prepared and filed in the U. S. Circuit Court for Western District of Arkansas at Texarkana, and by order of Judge Rogers, R. A. Greer was appointed as receiver and thereupon took possession of all the lines of the Texas & Ft. Smith Ry. Co. located in the Western District of Arkansas.

For all services rendered in above entitled suits and their final disposal the above charge is made.

357 April, May June & July, 1899. To all advice and services in suit of M. K. & T. Trust Co. against K. C. Shreveport & Gulf Ry. Co., in Circuit Court of Caddo Parish at Shreveport, La., being a suit to foreclose a mortgage on the railroad property and secure appointment of receivers pending the foreclosure proceedings.

The services charged for include the preparation of the bill of complaint, the institution of the suit, securing the appointment and qualification of Trimble, Martin, Gilham, Youree and Furnum as receivers, subsequent negotiations which resulted in the dismissal of the suit, discharge of said receivers and the settlement of their affairs and costs of suits, $2000.00.

(The Kansas City Shreveport & Gulf Ry. Co. owned all of the lines operated by the K. C. Pittsburg & Gulf Rld. Co. in the State of Louisiana, under a contract or lease from that company.

After the appointment of receivers for the Kansas City, Pittsburg Gulf Rld. Co. it was found necessary to institute suit for appointment of receivers for the K. C. Shreveport & Gulf Rld. Co. interest upon the bonds of which was in default.

Thereupon a bill was prepared and filed in said court and application thereon was made for the appointment of receivers, and the court apointed J. McD. Trimble, E. L. Martin, Robert Gilham, H. L. Youree, and Richard Furum, Receivers, who qualified as such and after the appointment of Fordyce and Withers as receivers of all the properties of the defendant companies in the suit of the State Trust Company against the Kansas City, Pittsburg & Gulf Rld. Co., et al., the said suit was dismissed.

For all the services rendered in the above entitled suit, and for all services and the conduct of said receivership and the final disposal of said suit, the above charge is made).

Aug.	22	To cash for 2 telegrams in re payment taxes on Surinam property	2.82
Sept.	12	To cash for 2 telegrams between Mr. Stilwell and Judge Trimble about S. & Ft. S. & O. K. C. & E. Matters	1.00
358			
Sept	19	To cash for telegram Judge Trimble Sept. 14 in re same matter $	.92
Sept.	28	To cash for telegram Judge Trimble Sept. 14 in re same matter	.40
Nov.	1	To time and services preparing and filing amended answer in case Moore et al vs. Jones	25.00
Nov.	24	To cash for 2 telegrams in re Barnett's proposition of settlement	2.00
Nov.	29	To services and advice in preparing for trial of Lumber Company vs. Port Arthur & Mexican S. S. Co. whose ship was libeled and Trust Co. indemnified sureties on release bond	50.00
Dec.	8	To cash for 2 telegrams regarding Trust Co. meeting in Chicago	.74

		To advice and services in reference to sale of $191,900 1st mortgage bonds of S. W. Mo. Light Co. and 94,200 preferred and 94200 of its common stock	100.00
Dec.	9	To time and services preparing and filing answer of Guardian Trust Co. to the interples of Jones & Oglesby in case of Moore et al v Jones, et al	50.00
1900			
Jan.	8	To time and services drawing contract appointing company agent for sale of lots at Port Arthur, Texas	15.00
Jan.	15	To one day's time making copy of bill of receivers of K. C. P. & G. R. R. Co. vs. O. D. C. & E. R. R. Co. cross bill of Mo. Rly Construction Co. and order appointing receiver including services and expenses of stenographers	
Feb.	3	To cash for 2 telegrams between Mr. Stilwell and J. McD. Trimble	2.52
Feb.	9	To cash for telegram J. McD. Trimble to Silas W. Pettit	.56
Mch.	9	To cash for 2 telegrams arranging Trust Company meeting	1.24
		To cash for certified copy judgment and order allowing appeal in Jones v. Hamm	1.50
Apr.	18	To cash for deposit docket fee company v. Mo. Water & Light Co.	3.00
Apr.	27	To advice and services in matter of instituting suit against K. C. Suburban Belt R. R. Co. in replevin for $15,000. worth of railroad steel and suit for converting $10,000 other steel	150.00
Apr.	30	To docket fee in replevin suit company v. K. C. Suburban Belt R. R. Co.	3.00
		To cash for expenses in replevin suit Company vs K. C. Suburban Belt R. R. Co.	.35
359			
Apr.	30	To all advice and services in preparation for trial and trial of cases wherein Jones & Ogelbay on the one side and Guardian Trust Co. on the other claiming money $16,000 deposited with Board of Trade in connection with the lease of the Temple Block, case being Moore v Jones	$ 300.00
Apr.	30	To time and services in negotiations with D. R. Francis and conference with Kennett and reaching agreement for Mr. Martin to be President Crescent Elevator Co.	25.00
May	15	To cash for telegram in re payment Williamson note by Trust Co.	.68
May	28	To cash for telephone message Trimble to Chadbourne in Chicago	4.10

May 3 To retainer and services in instituting suit against the K. C. P. & G. R. R. Co. to recover on certain coupons, including filing petition 150.00

May 4 To one day's services in all advising about and supervising obtaining possession and removal of steel rails and railroad plates involved in replevin suit getting replevin bond approved and writ of replevin issued and sheriff in control 25.00

May 1st 1899 to June 1st 1900 To all services to date in suit now pending of the M. K. & T. Trust Co. against the Texarkana & Ft. Smith Ry. Co. in U. S. Circuit Court for Eastern Dist. of Texas, at Beaumont, Texas 750.00

(After the appointment of receivers Fordyce and Withers in the suit of the State Trust Co. v. K. C. P. & Rld. Co., et al, it was found advisable to institute suit for foreclosure of mortgage of the Texarkana & Ft. Smith Ry. Co. in U. S. Court for the Eastern Dist. of Texas.

Accordingly a bill was prepared for the foreclosure of the mortgage of the Texarkana & Ft. Smith Ry. Co. and filed in said court where said suit has since been pending. For services therein as above specified the charge is made.)

May 1st 1899 to June 1st, 1900 To all services in the suit of the M. K. & T. Trust Company v K. C. Shreveport & Gulf Rld. Co. et al, in the suit now pending in U. S. Circuit Ct. for Western District of Louisiana at Shreveport, from May 1st, 1899 to June 1st, 1900 750.00

(After the appointment of receivers Fordyce and Withers in the suit of the State Trust Co. v the K. C. P. & G. Rld. Co. et al., it was found necessary to file a bill for the foreclosure of the mortgage of the K. C. Shreveport & Gulf Rld. Co. covering its railroad and other property in the Western District of Louisiana.

360 For the preparation of said bill of foreclosure, the filing of the same, and all services in said cause between said date, the above and foregoing charge is made.)

June 12 To expenses in 2 trips Independence in matter Mo. Water & Light Co. case $ 1.50

June 13 To services preparing notice of trustees' sale of Johana Nerder property at Carthage and having same published 10.00

June 23 To time and services preparing trust deed from Janssen Place Land Co. to Trust Co. 10.00

June 30 To advice and services in preparing 2 powers of attorney to Alonso Fernandes to effect the necessary acceptances and transfers of Trust Co. concessions, granted by the Republic of Mexico 50.00

To services and advice in procuring from Secretary of State a certified copy of the Articles of Association including capital stock and change of name of the Trust Co. and having same certified by Mexican Consul for Mr. Ball's use in Mexico 50.00

July 14 To services preparing motion for new trial and in arrest of judgment, filing and arguing same, getting time on over-

	ruling motion within which to file bond and bill of exceptions and to preparing and filing affidavit in appeal and having same allowed, all in case of Moore v. Jones, et al	250.00
Aug. 27	To cash for carefare to Independence on account of case of Guardian Trust Co. v. Mo. Water & Light Co.	.30
Aug. 20	To time, advice and services concerning and in drawing agreement between the Trust Co. and the Air Line for the turning over of money due the Air Line and held as indemnity by the Trust Co. for executing as surety bond in sum of $15,000.00 to Metropolitan St. Ry. Co.	75.00
Aug. 29	To cash for expenses in serving subpoenas in replevin suit Trust Co. v. Suburban Belt	1.15
Aug. 31	To services in connection with case of Trust Co. v. Mo. Water & Light Co. consisting of advice concerning statement of accounts and the procuring of the books of the defendant company for their examination to ascertain what defendant's counter claim for $32,000 was based on	100.00
	To services in connection with the making of demand on K. C. S. B. R. R. Co. for the payment of its notes and giving notice that the Trust Co. would sell the collateral security notes Set. 7, 1900	75.00
Sept. 1	To time and services examining records of Suburban Belt Rld. Co. office and going over collateral and value of same in connection with collecting the K. C. S. B. R. R. Co. notes held by the Trust Co.	25.00
361		
Sept. 1 to 10	To services in connection with the taking of Wilcox' deposition in Trust Co. v. Mo. Water & Light Co. including an examination and preparation of all accounts of all dealings between the two companies for 9 years	$ 300.00
Sept. 7 8	To one day's time in preparing for and of election of directors of Central Imp. Co.	50.00
Sept. 12	To retainer in case Cambria Steel Co. v. K. C. B. R. R. Co. et al. in U. S. Circuit Court	1000.00
Sept. 13	To time and services in going to Carrollton, Mo. to look up records and facts in case of Trust Co. v. Mo. Water & Light Co.	25.00
Sept. 17	To cash for expenses in filing stipulation in case Trust Co. v. Mo. Water & Light Co.	.30
Sept. 18	To cash for expenses going to Carrolton to investigate records in case Company v. Mo. Water & Light Co.	5.00
Sept. 21	To time and services on trip to Webb City, Mo. to take depositions in case Tamblyn v. Victoria Zinc Mining Co. in which receiver was sought for Mining Co.	25.00

Sept.	25	By check received as retainer in Cambria case	1000.00
Sept.	25	To time and services going to and in Chicago preparing for plea and answer in Cambria Steel Co. v. K. C. Suburban Belt Ry. Co. et al, in U. S. Circuit Ct.	500.00
Sept.	29	To cash for expenses going to Webb City, Mo. to take depositions in case Tamblyn v. Victoria Zinc Mining Co.	6.10
Oct.	5	To cash for certified copy of the pleadings in case Tamblyn v. Victoria Zinc Mining Co.	4.00
Oct. to 6	3	To time and services four days in looking over the minute book of Kansas City Suburban Belt Ry. Co. and Consolidated Terminal Rd. Co. also Journal records and taking extracts from the same to use in suit Cambria Steel Co. v. Trust Co.	200.00
Oct. to 11	8	To 4 days time and services in Chicago in consultation with Mr. Chadbourne concerning suit Cambria Steel Co. v. Trust Co. and 4 foreclosure suite brought by Provident Life & Trust Co. against several parts of Suburban Belt Rld. Co.	400.00
Oct. to 11	8	To 4 days time and services of C. A. Braley in Suburban Belt Ry. Co. office looking up facts to contest the Cambria suit	200.00
Oct.	9	To Retainer, time and services in preparing and filing answer of company in case First National Bank of Kansas City v. Trust Co. a suit on note for $25,000 made by the Suburban Belt Rld. Co. and endorsed by Trust Co. as accomodation for Suburban Belt Co. the answer filed pleading ultra vires	300.00
362			
Oct.	12	To time and services in Chicago taking Mr. Stillwell's deposition in case Trust Co. v. Mo. Water & Light Co.	$ 75.00
Oct.	15	To time and services meeting with attorneys of Oglesbay and Jones on various occasions to go over and agree on bill of exceptions in Moore v. Jones and to final agreement thereon and having said bill of exceptions certified and filed	25.00
Oct.	16	To cash for expressage on package from Byrne at Texarkana	.25
Oct.	17	To cash for certificate in case Finch v. Company to obtain affirmance of judgment	1.00
Oct.	17	To cash for deposit of docket fee in Finch v. Company necessary in obtaining this affirmance	10.00
		To cash for telegram Sept. 25 Trimble & Braley to Chadbourne	1.25
		To cash for telegram Sept. 28 to Clerk Circuit Court at Carthage, Mo. in case Tamblyn v Victoria Zinc Mining Co.	.67
Oct.	5	To cash for telegram Trimble to Chadbourne	.38
Oct.	6	To cash for telegram Trimble to Chadbourne	.38

Oct. 20	To cash for expenses of D. W. Eaton to Leavenworth on account of case Provident Life & Trust Co. v. Union Terminal Rld. Co.	1.74
Oct. 22	To cash for copy 'Ex. 1' attached to bill in case Cambria Steel Co. v. Suburban Belt	2.40
	To cash for telegram Trimble & Braley to Clark United States Circuit Court	1.12
	To retainer and services in preparing and presenting petition of Trust Co. to be made a party to foreclosure suit of Provident L & T Co v. K. C. Suburban Belt Co. so as to resist foreclosure in the U. S. Court	750.00
	To retainer and services in prepering and presenting petition of Trust Co. to be made a party to suit of Provident L & T Co v K. C. & Independence Air Line Co. et al so as to resist foreclosure in the U. S. Court	750.00
	To retainer and services in preparing and pesenting petition of Trust Co. to be made a party to suit of Provident L & Tr Co v Union Terminal Co et al so as to resist foreclosure in U. S. Circuit Court	750.00
	To retainer and services in preparing and presenting petition of Trust Co. to be made a party in suit Provident L & T Co v. K. C. Suburban Belt Co. to foreclosure mortgage on Consolidated Terminal Co. so as to resist foreclosure in U. S. Court	750.00
363	To retainer in the case of Bierce et al v Trust Co. for receiver for Trust Co. in U. S Circuit Court	$1000.00
Oct. 22	To cash for telephone to McKeighan at St. Louis Oct. 23 regarding Bierce case	2.00
	To cash for telephone to Chadbourne at Chicago, Oct. 23, regarding Bierce case	2.75
Oct. 29	To cash for telegram Trimble to Chadbourne Oct. 19	.92
Oct. 30	To cash for certified copies of order in Bierce case	2.25
Oct. 31	To one day's time in investigation book of K. C. Suburban Belt Co. for preparation of Trust Co. defense in Cambria suit	50.00
Oct. & Nov.	To services on Preparation of intervening petition in suit of Barnett & Record Co. v. Port Arthur Channel & Dock Co. in U. S. Circuit Court at Beaumont, and obtaining order for filing same from Judge Bryant at Sherman, Texas	200.00
Oct. & Nov.	To services and counsel and opinions in injunction suits in Calcasieu Parish District Court to enjoin railroad and subsidiaries	50.00
	To services, counsel and opinions in the case in De Soto Parish, La. to enjoin subsidy tax voted by the Town of Mansfield	50.00

Nov. 1	To retainer and services in preparing and filing petition of Trust Co. to be made a party to case of Provident L & T Co v Union Terminal Rld. Co. in U. S. Court for District of Kansas so as to be able to resist foreclosure of mortgage	500.00
Nov. 5	To time and services in preparing and filing answer to bill of complaint of Provident L & T Co. to foreclose mortgage on K. C. Suburban Belt Rld.	500.00
	To services in preparing and filing answer to bill of complaint of Provident L & T Co to foreclose mortgage of Consolidated Terminal Railway	500.00
	To services in preparing and filing answer to bill of complaint of Provident L & T Co to foreclose mortgage of Union Terminal Rld Co.	500.00
	To services in preparing and filing answer to bill of complaint of Provident L & T Co. to foreclose mortgage on KV & Independence Air Line	250.00
	To service in preparing and filing answer in case Cambria Steel Co. v. Guardian Trust Co. et al in U. S. Circuit Court	750.00
Nov. 19	To one day's time and services in reference to resisting motion filed by Lathrop, Morrow, Fox & Moore, to set aside order of Federal Court appointing Wash Adams receiver of Mo. Elevator & Terminal Co. and of Central Improvement Co.	50.00
364		
Nov. 21	To one day's time and services in taking testimony on behalf of plaintiff in case of Cambria Steel Co. v. Guardian Trust Co.	$ 50.00
Nov. 22	To time and services rendered in same matter	50.00
	To cash for telegram sent Oct. 28, Trimble to McKeighan	.25
	To cash for telegram sent Oct. 26, Trimble to Chadbourne	.54
	To cash for telegram sent Oct. 27, Trimble & Braley to Guardian Trust Co. at Chicago	.30
	To cash for telegram sent Oct. 30, Trimble & Braley to Chadbourne at Chicago	.38
	To cash for telegram sent Oct. 27, Trimble & Braley to Judge Bryant	.34
	To cash for telegram from Judge Bryant to Trimble & Braley	.44
	To half cash for telegram sent Oct. 29 to Judge Bryant	.46
	To half cash for telegram Oct. 31 to Judge Bryant	.34
	To half cash for telegram Oct. 31 from Judge Bryant	.30
	To half cash for telegram Oct. 31 from Judge Bryant	.34
	To half cash for telegram Eaton to Oglesbay	.50
	To half cash for telegram Nov. 1st, Trimble & Braley to Eaton	.76
	To half cash for telegram Nov. 1st Braley to W. H. Pope	.32
Nov. 26	To cash for telegram Nov. 14 Trimble to Chadbourne	.38
	To cash for telegram Nov. 16 Trimble to Chadbourne	.80
	To cash for telegram Nov. 22 Trimble to Cleveland	1.75
	To half expense J. A. Eaton going to and at Sherman, Texas, Nov. 1 to 14 on account intervention in Port Arthur Channel & Dock receivership	10.

	To cash for notary fees acknowledgment of affidavit of Mr. Dean	.25
Nov. 27	To continuous services Oct. 24 to Nov. 27 in case Bierce et al vs. Guardian Trust Co. for appointment of receiver, preparing evidence and arguing demurrer at Kansas City and resisting application for appointment of receiver at St. Louis	3000.00
Nov. 28	By check received as retainer and on account of services Bierce case	2000.00
Nov. 28	To cash for telegram Nov. 28 Trimble to Chadbourne	.64
	To cash for telegram Nov. 28 Braley to Gilbert	1.00
Nov. 30	To cash for telegram Trimble & Braley to Chadbourne	2.90
	To cash telegram to Sharritt	.37
	To cash for telegram to Wing & Chadbourne from Trimble & Braley	.50
	To cash for telegram to J. E. McKeighan from Trimble & Braley	.31
1901	To cash for copy of complaint Provident L & T Co. v. Union Terminal Rld. Co.	4.50
Oct. 11	To cash for ticket to St. Louis and return to take up demurrer in Bierce case	9.50
Oct. 17	To cash for railroad fare and sleeper to St. Louis and return in matter of order in Bierce case	11.50
Oct. 21	To services in arguing demurrer to bill of complaint in case of W. W. Bierce et al vs. Trust Co. before Judge Thayer at St. Louis and procuring leave to except to certain parts of bill and answer the remainder	250.00
	To cash for telegram Trimble & Braley to Chadbourne Chicago Oct. 17	.52
Oct. 18	To cash for telegram Trimble & Braley to Chadbourne, Chicago	.40
365		
Nov. 15 25	To services in preparing exceptions to parts of bill in case of Bierce vs. Guardian Trust Co. and in preparing answer to remainder of bill	$ 300.00
Dec. 2	To cash for expressage on papers in Bierce case	.35
1902		
June 23	To cash for telegram A. M. Thayer to C. A. Braley	.81
	To cash for telegram to C. A. Braley from Judge McKeighan	.21
June 27	To cash for telephone to Judge McKeighan St. Louis about taking company out of hands of Receiver	2.00
	To cash for telegram to Judge Amos M. Thayer of St. Louis	.40
July 11	To time, services and advice in drawing application of company for discharge of receiver of company	200.00
July 11	To cash for telegram to McKeighan	.37
July 18	To cash for telegram to McKeighan	.33
Aug. 5	To cash for telegram to Judge Thayer	.92
	To cash for telegram to Judge Thayer	3.40
	To cash for cablegram Aug. 13 J. McD. Trimble to Kuhn, London	4.76
Sept. 4	To cash paid for copies of objections of complainants in Bierce case	5.18
Sept. 13	To cash for copies of documents Bierce case	.85

		To expenses of J. McD. Trimble to St. Louis and return to argue exceptions to parts of bill in Bierce case	27.25
Oct.	1	To cash for copies of documents for use in Bierce case	9.20
		To cash for copy of opinion of court in case of Moore v. Jones	1.00
		To expenses of J. McD. Trimble to St. Louis Oct. 4 in matter of discharge of receiver	26.50
Oct.	20	To cash for copy of order denying applicants leave to file amended and supplemental bill	.555
Oct.	22	To cash telegram Oct. 2 from Judge Thayer	.35
Oct.	25	To all time and services in matter of application of Trust Company for discharge of receiver and return of its property to the constituted authorities of the company subsequent to filing of application for such discharge	1500.00
Oct.	25	To all advice to Trust Company its officers and agents from day to day during the receivership from Nov. 30, 1900, to Oct. 25, 1902, concerning their powers, liabilities, and duties and the proper maintenance of the corporate organization pending the receivership	500.00
Nov.	13	To cash for telegram to clerk U. S. Circuit Court at Beaumont, Texas	.95
Dec.	3	To cash for telegram Blanchette to Trimble & Braley	.65
Dec.	8	To cash for express on Briefs in case Moore v. Jones	.50
Dec.	31	To cash telegram Dec. 15 from W. H. Pope, Marshall, Texas	.83
1903			
Jan.	12	To cash for expenses on two trips to Jefferson City, Jan. 9 and 12 to argue Jones vs Hamm in Supreme Ct	34.60
Jan.	24	By one-half rebate on C. A. Braley's Wabash Ticket on trip to Philadelphia	3.67
Feb.	18	To cash for expressage on briefs in Chicago Zinc Mining case	.25
Feb.	21	To cash for copy of opinion of court in Moore vs. Jones	9.50
366			
Feb.	26	To cash for telegram Jan. 26 F. B. Wilcox to C. A. Braley	$ .50
		To cash for telegram Clerk Supreme Court Feb. 18 to Trimble & B. in Jones vs. Hamm	.25
Feb.	28	By cash received account Port Arthur Channel & Dock Co. expenses	100.00
Mar.	4	To expenses C. A. Braley and Wash Adams to Sherman Texas	45.00
Mar.	17	To cash for copy of opinion State Trust Co. vs. K. C. Pittsburg & Gulf Rld. Co.	5.35
Mar.	18	To expenses case Mellier v Trust Co	.20
Mar.	20	To cash for copies of order appointing Judge Black & Wash Adams receivers	2.30
Mar.	21	To cash paid M. H. Lyon for legal services rendered Guardian Trust Co. in Chicago	10.00
Mar.	27	To cash for expenses of C. A. Braley to Joplin, Mo. Mar. 26 to 28, in Zinc case	17.55
Apr.	4	To cash for expenses verifying affidavit of service of notice of hearing at Sherman, Texas, of supplemental and intervening petitions in Port Arthur Channel & Dock suit	.25
Apr.	6	To cash for telegram Trimble to D. E. Bryant, 3-13	.50

		To cash for telegram Supreme Court Clerk to Trimble & Braley Mar. 19	.35
		To cash for telegram Mar. 20 Trimble & Braley to Clerk Supreme Court	.25
		To cash for telegram Mar. 23 Clerk Supreme Court to Trimble & Braley	.71
Apr.	11	To cash for certified copy of order in Moore v. Jones	1.00
Apr.	14	To cash for expenses verifying motion in Moore v. Jones	.75
Apr.	18	To cash for telegram Apr. 8 Clerk of Court to Trimble in Port Arthur Channel & Dock case	.68
		To cash for telegram Apr. 9 to Clerk of Court from Trimble & Braley	.40
		To cash for telegram Trimble & Braley to Clerk in Port Arthur Channel & Dock case	.95
		To cash for telegram Apr. 16 to Trimble & Braley same case	1.00
Apr.	25	To cash for expressage	.30
		By check for expenses to Sherman, Texas, in Port Arthur Channel & Dock case	100.00
Apr.	22	To cash expenses C. A. Braley to Sherman, Texas	25.68
Apr.	25	To cash telegram Scott to Trimble & Braley	.61
Apr.	28	To cash telegram Braley to Jos. Kling	2.63
Apr.	29	To cash telephone C. A. Braley to Scott in Chicago Zinc Mining case	.90
		To cash for telegram Braley to C. N. Clark	.53
		To cash for telegram Braley to J. S. Cameron	.85
		To cash for telegram Trimble & Braley to Clerk U. S. Circuit Court	.50
Apr.	30	To cash telegram from Judge Bryant to Trimble & Braley	.50
		To cash telegram C. N. Stark to C. A. Braley	.50
May	1	To cash 2 telegrams Trimble & Braley to Clerk U. S. Circuit Court	.98
May	2	To cash for telegram Judge Bryant to Trimble & Braley	.50
May	4	To cash for telegram J. McD. Trimble to C. A. Braley at Sherman, Texas	.95
367		To cash for telegram from Trimble & Braley to C. A. Braley at Sherman, Texas	.50
May	6	To cash for telegram C. A. Braley to J. Kling	1.20
		To cash for telegram C. A. Braley to C. N. Stark	.92
		To cash for telegram Judge Bryant to Trimble & Braley	.43
May	22	To half cost copy order Provident L & T Co. v. Port Arthur Channel Dock Co.	1.10
		To half C. A. Braley's expenses to Beaumont, May 13 to 20, account Port Arthur Channel & Dock case	32.50
		To cash for telegram Trimble & Braley to Bates in same case	2.06
May	27	To cash for telegram Trimble & Braley to Bates in same case	.50
June	18	To half C. A. Braley's expenses to Sherman, Texas, June 14 to 18, 1903	22.25
June	19	To cash telegram Bates to Trimble & Braley	.65
June	30	To cash for telephone to Wilcox at Chicago in Chicago Zinc Mining case	1.40
		To cash for telegram June 13 to Braley about hearing Port Arthur Channel & Dock case at Sherman, Texas	.3
		To cash for telegram June 19 to Bates	.5

		To telegram June 23 to Bates		.80
July	11	To cash telegram E. L. Martin to L. Heyneker		1.40
July	29	To half cash paid for copy report of commissioner in Provident L & T Co. v. Port Arthur Channel & Dock Co. case		3.00
Aug.	20	To cash for telegrams to and from C. L. Bates		.70
Sept.	14	To cash for telegram Trimble & Braley to Ivins, Kidder & Melcher, New York		1.01
Oct.	10	To cash for telegram Sept. 3 to Ivins, Kidder and Melcher		.98
Oct.	30	To cash for copy of order appointing receiver of O. K. C. & E. R. R. Co.		1.80
Nov.	21	To cash for telegram from C. L. Bates regarding ruling of Judge Bryant		1.18
Dec.	1	To cash for expressage briefs in First Natl. Bank case		.45
Dec.	10	To half C. A. Braley's expenses to Beaumont, Texas, account of hearing before Judge Bryant		41.50
Dec.	12	To cash for telegram Trimble & Braley to Bates		.83
Dec.	11	To cash for acknowledgment to four certificates of E. L. Martin to the plea of jurisdiction		1.00
1904				
Feb.	8	To half telegram Trimble & Braley from C. L. Bates		.42
Feb.	12	To half telegram Trimble & Braley to C. L. Bates		.31
Feb.	13	To half telegram Trimble & Braley from C. L. Bates		.28
Feb.	29	To half telegram Trimble & Braley to C. L. Bates		.53
1904				
		by cash		25.36
July	12	By cash		765.45
1905				
Jan.	10	To service in arguing case of First National Bank v Guardian Trust Co. before Supreme Court of Missouri at Jefferson City	$500.00	
Jan.	16	To expenses of Trimble on trip to Jefferson City in case of First Natl. Bank v. Guardian Trust Co.	14.05	
Apr.	20	By cash		514.05
		By Balance due exclusive of interest		20533.25
			$21047.30	$21047.30

368 Mr. Rosenberger thereupon offered in evidence the opinion and decision of he Supreme Court of Missouri in Trimble & Braley vs. Guardian Trust Company, 244 Mo. 228.

The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction of said opinion in evidence on the same grounds urged against the introduction of the petition filed in the Circuit Court and made the same offer of proof in support of said objections. Said objections were, by the Master, overruled, and said offer of proof denied, to which ruling said parties duly excepted.

Mr. Smith: We object to the judgment and opinior of the Supreme Court, for the additional reasons that we were

not parties to the case in which that judgment was rendered and, for the additional reason, that no notice was ever served on us to defend the case; and for the additional reason, that neither the judgment nor the opinion show that the services were rendered in reference to the litigation in which it is sought to tax costs as between solicitor and client; and, for the additional reason, that the opinion in that case shows that there was only one part of the amount stated in the items that was allowed and the other ones being disallowed by the Supreme Court; and, for the additional reason, that that part which was allowed was for services claimed to have been rendered in filing petitions and answers, the purpose of which was to enforce the claim of the Trust Company against the Southern Company and had nothing to do with any allegations contained in the original bill in the Cambria case; but were ancillary bills or intervening bills filed in that litigation; and that the judgment and opinion are not binding upon us and don't fix or establish the value of the services rendered in this litigation which are now the subject of attack.

The Master: Was the judgment, Mr. Rosenberger, in two separate amounts or just the $2,250.00 and interest? Have you got the judgment there?

369 Mr. Rosenberger: I will answer your question in just a moment: the judgment was rendered for the aggregate of certain items, which included the two items of $2,250.00 and $4,500.00, respectively, with the interest thereon from the date of the filling of the suit by Trimble & Braley. Now it will be noted that payment made to Trimble & Braley was between ten and eleven thousand dollars and that the aggregate of the two items, $2,250.00 and $4,500.00, totaled only $6,750.00, the difference between that total and the amount of the judgment being represented by other items of service having no connection with the Cambria suit. But the Master will find that without difficulty on the reading of the opinion of the Supreme Court he will be able to segragate these two items applicable to the Cambria case from the other items that were involved in the Trimble & Braley suit. Do I make myself understood by the Master?

The Master: Yes, I understand the opinion will show that.

Mr. Rosenberger: The opinion will show that.

Mr. Smith: I object to the opinion and the statement of Mr. Rosenberger that it will show that, for the reason that

I insist that it does not show it and it cannot be determined from the opinion. In fact, as I read the opinion the amount of $2,250.00 was disallowed by the Supreme Court.

Mr. Rosenberger: Well, you are mistaken.

The Master: Subject to the objection, I will overrule the objection.

Mr. Crane: I am just getting it right: you are ruling, as I understand, what these parties got out of the litigation between themselves, whatever was derived, becomes binding on us?

The Master: Yes, I rule that when they were paid these expenditures at the end of the litigation, the judgment against the Guardian Trust Company. The Master is not going to retry those law suits to ascertain whether those services were reasonably worth that sum.

370 Mr. Crane: In other words, you hold that fixes the amount we are required to pay, whether we were a party to them or not a party?

The Master: As regards whether you are a party, if you are properly chargeable with costs as between attorney and client, then you took your chances. You might have come in and defended them, if you were liable for those costs as between attorney and client, and so that is a possible consequence if the law didn't excuse you.

Mr. Crane: Well, if they didn't invite us to come in how can we be bound by those judgments? What right had we to go in there? We had no such right. I just want to get your position.

The Master: I understand your point. The Master feels himself very much bound down by the opinion of the district judge and he is very anxious also to expedite, shorten the hearing. I think it makes for justice, makes for justice for all parties concerned, that we shouldn't consume too much time in this hearing before the Master in a case in which you have both appealed to the District Court and from the District Court to the higher court. I don't think it makes for justice for us to drag out this hearing and try the Mecartney case and the Trimble case; be at this for some length of time.

Mr. Rosenberger: I want the Master to know our attitude about that. That if these gentlemen have any proof, desire to prove any of these law suits against the Guardian Trust

Company or its Receiver which culminated in judgments and decrees against the Guardian Trust Company for attorney fees were collusively conducted or conducted in bad faith, we have no objection to that class of evidence and I assume that when the Master has made the statement he has just made he means with the qualification that if these gentlemen have any proof that any of these legal proceedings culminating in charges of expenses for attorney fees, or otherwise,
371 were collusively conducted or conducted in bad faith as between the adversary parties thereto that it would be open for them to show it.

The Master: Yes, that is true. The Master goes farther than that. If they can show any specific part of these judgments for services were not rendered in defenses against these suits, that, the Master thinks, should be excluded.

Mr. Smith: Just let me make an objection on that point and I would like to have it in this record. The proposition is this: a great deal of this litigation and of the matters that they are seeking to have taxed against us as costs are transactions that occurred twenty years ago and the judgments and the salaries that they are trying to assess against us cover transactions that we have no means of knowing about. Some of the men who handled that business are dead. We have no way of ascertaining just what and just how much of their time they devoted to these different things and it seems to me to ask us to go and hunt up those facts and to furnish the proof with reference to issues that are not connected with this litigation for the purpose of subtracting those amounts from this claim is not the legal and proper way to put in the evidence in this case on the issues as to what is the value of the services that were devoted to the issues involved in this controversy.

The Master: I will assume that the evidence will show that the judgments were rendered for services which would be, under the decision of the Federal Court, memorandum opinion of the Federal Court, taxable as costs between client and solicitor; there will be some showing to that effect, has been already.

Mr. Crane: Well, in addition to that I am making the broad objection—I guess it is understood by this time—that these judgments between other parties determining the amount that the Guardian Trust Company owes for fees, in the absence of notice to us, or request to us to be bound by them, or to defend those suits cannot be accepted as primary

evidence of what those services were worth, or as any evidence.

372 The Master: I understand.

Mr. Crane: It is still, regardless of those judgments, for them to prove them, and not for us to disprove them. That is the broad objection I want to make in regard to those judgments.

The Master: Yes, we understand. The objection is overruled, if you are considering it as a specific objection. I don't think so.

Mr. Smith: Yes, we are. We are making the objection as a general statement of this same, that these judgments are not binding. That is the reason.

The Master: All right; objection overruled.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Companl, by their counsel, at the time duly excepted.

Said opinion of the Supreme Court of Missouri, reported in 244 Mo. 228, was thereupon received in evidence by the Master.

(Said opinion, as reported in 244 Mo. 228, is hereby, pursuant to stipulation of the parties, incorporated herein by reference, in lieu of being herein set forth.)

Mr. Braley: The suit of our firm against the Guardian Trust Company, the petition and judgment in which has been here introduced in evidence, was resisted by the company and contested from the Circuit Court to the Supreme Court. The company paid the fee on the decree of the Supreme Court.

On cross-examination by Mr. Smith, Mr. Braley testified as follows:

Mr. Smith: Mr. Braley, I believe you stated this litigation began somewheres around twenty-four or twenty-five years ago?

Mr. Rosenberger: Well, I object to that as too indefinite. The files show the exact date the 6th of September, 1900.

Mr. Smith: Well, before the Cambria suit was filed
373 there was a foreclosure proceeding of the Pittsburg & Gulf, wasn't there?

Mr. Braley: I believe there was.

Mr. Smith: And before that there was a suit filed on behalf of the Trust Company to put the Pittsburg & Gulf in the hands of a receiver?

The Master: Which suit?

Mr. Smith: The Grannis case.

The Witness: I forget; there was a plan up, I know. There was one client in the State Court.

Mr. Smith: And you filed that on behalf of the Trust Company, did you not, in the interest of the Trust Company?

Mr. Rosenberger: I object to that as having no relevancy.

The Master: The objection is overruled.

To which last action and ruling of the Master, the Guardian Trust Company, by its counsel, at the time duly excepted.

Mr. Braley: I forget just whose interest it was in, Mr. Smith, but it was while I was in the office that there was in connection with the Trust Company a petition filed. I forget who the plaintiffs were.

Mr. Smith: Now when you spoke this morning about litigation spreading over and including practically all of the railroads you meant this whole litigation, did you not?

Mr. Braley: I mean the litigation covering all of that part of it that was in defense of the Cambria case where there was so many defendants; and also I meant the railroads; whether they were defendants or not, I can't say.

Mr. Smith: But you cannot at this time differentiate as to what part of the services of Trimble & Braley were devoted to the Pittsburg & Gulf foreclosure case and what part and during what interval of time they were devoted to the Cambria case and during what part of the time those services were devoted to foreclosure of mortgages down in Louisiana, Arkansas and Texas; and what part of it was devoted to
374 the Port Arthur Channel & Dock Company case? Can you pick out in your mind and say that during such and such an interval, they were devoting their time to this litigation or that litigation?

Mr. Rosenberger: That is objected to as carrying with it the assumption that these various litigations mentioned in the question were all being carried on at one and the same time, and the records show that the foreclosure of the mort-

gages on the Kansas City, Pittsburg & Gulf and its subsidiary companies had been completed, the properties had been sold at foreclosure sale and were in possession of the Kansas City Southern Railway Company by March of 1900, prior to the commencement of this Cambria suit.

Mr. Smith: Now, are you through?

Mr. Rosenberger: Yes.

Mr. Smith: The purpose of my question, if your Honor please, is to ask Mr. Braley if he can remember about these different transactions. That is the purpose of the question. I don't care what the record is. Now he is giving evidence about them, I want to know what he can remember about these matters from his recollection.

The Master: This is cross-examination and the Master will overrule the objection.

To which last action and ruling of the Master, the Guardian Trust Company, by its counsel, at the time duly excepted, and still excepts.

Mr. Braley: Mr. Smith, you asked whether I can remember or not these cases. That is a little bit indefinite.

Mr. Smith: A little bit what?

Mr. Braley: A little bit indefinite. I can go into detail about the litigation that I was in; if you are asking about services between the times mentioned that were performed by Trimble & Braley and their associates, I told you it was at least three-fourths.

Mr. Smith: That is what I am asking you. When you were testifying about the time they were giving to this railroad litigation, all of it, the Pittsburg & Gulf foreclosure suit and the Cambria case, the Belt litigation, Port Arthur
375 Channel & Dock case, when you were giving that evidence you meant they were giving three-fourths of their time to the whole litigation?

Mr. Braley: To the litigation of the Guardian Trust Company and the Cambria case between the dates mentioned in the question asked me.

Mr. Smith: Now do you mean to say that three-fourths of the time they were giving to that litigation was with reference to the Cambria case and they were giving only one-fourth of their time to the Texas case, the Beaumont case, the Port Arthur Channel & Dock Company case?

Mr. Braley: They were.

Mr. Smith: You say they were giving only a quarter of their time to that case and three-fourths to the Cambria case?

Mr. Braley: Matters included in the Cambria case.

Mr. Smith: What were they doing in the Cambria case?

Mr. Braley: My remembrance is they were taking care of the Northern Townsite Company, the Guardian Trust Company, the—there was a real estate company down here, Central Improvement Company, I think, the elevator companies were in.

Mr. Smith: What were they doing? That is the question I was asking you.

Mr. Braley: They were defending them, and trying to keep them from foreclosure and protecting their property.

Mr. Smith: How were they doing it? Were they taking testimony on it?

Mr. Braley: Testimony and hearings all the time.

Mr. Smith: When did this testimony begin? When did they begin to take testimony?

Mr. Braley: I can't tell you the date.

Mr. Smith: Don't you know they didn't begin the taking of testimony until February, 1903?

376 Mr. Rosenberger: That is objected to, the record shows when that began.

Mr. Braley: That may be so, Mr. Smith. They would be spending between the time the suit was filed a great deal of time in looking over testimony before they did begin.

Mr. Smith: Hadn't taken any yet, had they?

Mr. Braley: I said they would spend a lot of time on testimony before they began taking it after the suit was filed.

Mr. Smith: Isn't it true they filed their answer in this case in November, 1900, and there wasn't anything more done in the way of court proceedings, in the way of taking testimony, or anything of that kind, until in January or February—after the 15th day of January, 1903?

Mr. Braley: If the record shows it that is true; that is, in regard to the filing of pleadings, but not about getting ready for testimony.

Mr. Smith: Do you know of their filing any pleading between the 1st of December, 1900, and the 15th of February, 1903?

Mr. Braley: I can't give you a single date.

Mr. Smith: Do you include in this answer to this question the foreclosure proceedings that were instituted against the Union Terminal Company and the Consolidated Company and the Air Line and Belt Line?

Mr. Braley: I don't remember whether those were in the Cambria case or not. Those were separate charges.

Mr. Smith: Weren't they working on those things at the same time?

Mr. Braley: That was in the foreclosure of the Belt case.

Mr. Smith: Well, were they performing these services you speak of in reference to that litigation during that time?

Mr. Braley: That was preceding this period.

Mr. Smith: Can you tell when they did do that work?

Mr. Braley: It was all accomplished by the time the for [—] of the Belt, which I think was in either 1900 or 1901.

377 Mr. Smith: Well, what did they have to do with any of the foreclosure proceedings prior to the final decree?

Mr. Braley: What did they do?

Mr. Smith: Yes, what did the Guardian Trust Company have to do, what services were rendered by attorneys of the Guardian Trust Company prior to that decree in the foreclosure cases?

Mr. Braley: I can't tell you what services were performed by the Guardian Trust Company. We filed answers and looked after the litigation.

Mr. Smith: That is what I am asking you, what services did you perform other than that?

Mr. Braley: You mean in those two cases?

Mr. Smith: In those foreclosure cases?

Mr. Braley. My memory don't go back to tell you just what services were performed twenty-five years ago.

Mr. Smith: Can you tell what services were rendered during any part of this period of time with reference to the Cambria case?

The Master: What period was that?

Mr. Smith: Any time from September 6, 1900, up to November, 1904.

Mr. Smith: Can you specify during any of that time what services they were rendering and in what suit?

Mr. Braley: They were getting ready for the testimony and filing answers and spending at least three-fourths of their time after case was filed.

Mr. Smith: They did spend a fourth of their time at something else, didn't they?

Mr. Braley: I can't say; they did spend at least three-fourths.

Mr. Smith: But you are just giving your estimate of what time they spent on it.

Mr. Braley: I am giving my estimate.

Mr. Smith: Was Mr. Wash Adams in that litigation during a considerable part of that time, this period?

378 Mr. Braley: I don't remember, I know he was in the Channel & Dock litigation, and he was in conference with Judge Trimble about other matters relating to the Guardian Trust Company.

Mr. Smith: But you don't remember whether he appeared in the Cambria case at all?

Mr. Braley: I don't remember whether he appeared in the Cambria case.

Mr. Smith: Mr. Braley, I wish you would do this: I wish you would state in detail what was done in the Cambria case by Trimble & Braley?

Mr. Braley: Holding conference all the time at various offices of the company and the Guardian Trust Company was getting ready and seeing experts about testimony that was to be introduced and filing pleadings and attending hearings.

Mr. Smith: How much of their time was devoted to the enforcement of their claim or considering the enforcement

of their claim against the Kansas City Southern and how much of their time directed to the defense of the suits that were brought by the Cambria people and these charges made in the ancillary bills?

Mr. Braley: I should expect they were all involved in the same case.

Mr. Smith: Yes; but you can't tell how much was devoted to one or how much to the other?

Mr. Braley: No, I can't.

Mr. Smith: Do you know when the plan for the construction of the Mexico & Orient, Kansas City, Mexico & Orient began?

Mr. Braley: No, I can't tell, Mr. Smith.

Mr. Smith: Well, wasn't it during this period?

Mr. Braley: It was along while we were on Wyandotte and 7th Streets; I could not tell you the years.

Mr. Smith: Wasn't the building or the planning for the building of the Mexico & Orient involved in the Bierce case when that petition was filed?

379 Mr. Braley: Not that I remember of.

Mr. Smith: Did you have another company called the United States & Mexican Trust Company?

Mr. Braley: Yes; I think it was the United States & Mexican Trust Company.

Mr. Smith: Was that part of this Guardian Trust Company or was it an independent institution?

Mr. Braley: I don't remember, but I think that was largely fathered by Mr. Haff and a man by the name of Rider and I don't remember that it was a part of the Trust Company at the present time.

Mr. Smith: Did you have anything to do with rendering services in that business at all?

Mr. Braley: Don't recollect of any.

Mr. Moore: You were counsel for the Kansas City, Mexico & Orient?

Mr. Braley: Mr. Trimble was.

Mr. Smith: Mr. Braley, one question I wanted to ask: in this employment of Mr. Trimble as general counsel, that included Trimble & Braley?

Mr. Braley: It did.

Mr. Smith: Whatever was paid to him went to the firm?

Mr. Braley: That is right.

Mr. Smith: What was the salary of Trimble & Braley before this litigation began with the Guardian Trust Company?

Mr. Braley: I can't say now without referring to the books.

Mr. Smith: Well, about how much was it?

Mr. Braley: I say I can't tell.

Mr. Smith: Well, it was substantially—

Mr. Braley: (interrupting) I think it was considerably more than $6,000.00 though I am not sure. I should think so.

Mr. Smith: That is your recollection, that it was that much, or more.

Mr. Braley: Yes, I should think it was, should have been. I can tell exactly by going back to the old books, Mr. Smith, if that is material.

380 Mr. Smith: Well, that is satisfactory to me, that it was that much or more. That was before any of this litigation began, that is what I am getting at?

Mr. Braley: Well, it was increased, as I remember, from time to time, but I cannot give you I mean from the first starting.

Mr. Smith: Yes; what I am getting at is, prior to any of this litigation, the Pittsburg & Gulf foreclosure or the Cambrie case, the salary of the general counsel of the Guardian Trust Company, Trimble & Braley, or Mr. Trimble was six thousand dollars a year or more?

Mr. Braley: I can't remember any of those checks, I might be inaccurate there, Mr. Smith, unless I refer to our ledger.

Mr. Smith: That would be your recollection about that, six thousand or more?

Mr. Braley: I am speaking of what it ought to be.

Mr. Smith: I am asking you to give your best recollection on that. If you cannot do that, I would like to have you look it up, because I would like to prove it?

Mr. Braley: Well, I would prefer to look it up and get the books and put it in and get it accurate. Now will you specify the time?

Mr. Smith: Why, prior to, for a year or two prior to January 1, 1899?

Mr. Braley: January 1, 1899.

Mr. Smith: Mr. Braley, Mr. Rosenberger refreshed your recollection from the minutes of the Trust Company of October 22, 1902, in which the salary of Mr. Trimble was fixed at $500.00 a month and he read therefrom the resolution fixing the salary of the president at $500.00 per month; let me refresh your recollection with reference to the other officers: president, H. H. Harris, $500.00 per month; first vice-president, E. L. Martin, $500.00 per month; secretary, S. B. Willey, $300.00 per month; treasurer, C. W. Hastings, $250.00 per month; counsel, J. McD. Trimble, $500.00 per month; do you remember those salaries were fixed at that time for those gentlemen?

381 Mr. Braley: I don't remember.

The Master: As to what date?

Mr. Smith: October, 1902.

The Witness: I have no independent memory of it.

Mr. Crane: Well, that is right after it came out of the receivership.

Mr. Smith: The fact that those men were receiving salaries of that amount would indicate that the company had a considerable amount of business, wouldn't it?

Mr. Braley: Well, yes.

Mr. Smith: Requiring the advice and counsel of attorneys; is that not right.

Mr. Braley: Yes.

Mr. Smith: And they would have hired and employed counsel even if there hadn't been a bit of work, would they not?

Mr. Rosenberger: I object to that as speculative.

Mr. Braley: I don't know.

The Master: Oh, I guess that is not proper.

The Witness: I don't know about that—

The Master: (Interrupting) Wait a minute, Mr. Braley: that objection was sustained to that question about whether they would hire anyone or not.

Mr. Smith: Yes; there had always been a salary paid to the general counsel prior to that time, had there not?

Mr. Braley: I think there had.

Mr. Smith: Even though there was no litigation of this kind going on; isn't that true?

Mr. Braley: Of this kind, I don't know what you mean.

Mr. Smith: I mean of this Cambria case or Pittsburg and Gulf case or any of this foreclosure litigation.

Mr. Rosenberger: I object to the injection of the
382 Kansas City, Pittsburg & Gulf case; that was closed up long before the Cambria dispute broke out.

The Master: I think it is proper to ask whether the business of that company required counsel whether they had Cambria litigation on or not.

To which last action and ruling of the Master, the Guardian Trust Company, by its counsel, at the time duly excepted, and still excepts.

Mr. Smith: Mr. Braley, isn't it a fact that the Guardian Trust Company was trying to enforce a claim against the Kansas City Southern on account of some Pittsubrg & Gulf transactions, wherein they tried to hold the Kansas City Southern liable at that time for debts of the Pittsburg & Gulf Company to the Trust Company?

Mr. Braley: At what time?

Mr. Smith: After the Kansas City Southern had taken over the property of the Pittsburg & Gulf Company; that is, in March, 1900?

Mr. Braley: There was a time when—I can't remember that the Guardian Trust Company was. I know Trimble & Braley tried to enforce a claim against the subsidiary companies and I think make the Southern liable.

Mr. Smith: Don't you know the Trust Company had filed an intervening petition in that Pittsburg & Gulf receiver-
ship?

Mr. Braley: I don't recollect about that.

Mr. Smith: If they did that your firm was having to give it some attention, was it not?

Mr. Braley: Yes.

Mr. Smith: Were you present when this case was tried, this Trimble & Braley case was tried before Judge Ball as Referee?

Mr. Braley: Yes, sir.

Mr. Smith: Now let me ask you, reading from the testimony of Mr. Trimble in that case, if this will not refresh your memory?

Mr. Braley: Before the Master?

383 Mr. Smith: Before the Referee?

Mr. Braley: Referee Ball?

Mr. Smith: Yes; on the question of the allowance of $7125.00.

Q. How much was allowed you?

A. $7,000.00 for two years' services to the receivers—nearly two years—one year and eleven months I think. I took down to Judge Thayer at that time an itemized statement of the services we had rendered to the receiver.

The Master: Who is testifying?

Mr. Smith: Mr. Trimble.

A. (Continuing) "Not carrying out, however, any charges but simply a memorandum of the services rendered and after he had made allowance to the receiver and some other attorneys he asked what allowance I wanted. I told him we had represented the receiver for one year and eleven months—the receivers—and handed him the itemized statement, but did not examine it, and asked me how much I thought we ought to have. I told him I thought we ought to have $4,000.00 a year, and at the rate of $4,000.00 the year and eleven months. He replied very promptly, "We will just call it two full years and make it $3,500.00 a year". So he put it that way, for services to the receivers and in addition to that there was some expenses, some hundred or two hundred dollars that we had incurred, and that was allowed in addition to the $7,000.00."

Mr. Smith: Now do you remember whether that was in all?

Mr. Braley: I don't know.

Mr. Smith: You don't know whether that included the services in the Cambria case or other litigation?

Mr. Braley: No.

Mr. Smith: Now in the exhibit attached to that petition, I notice here a charge: "To cash for expenses on two trips to Jefferson City, January 9th and 12th, to argue Jones vs. Hamm in the Supreme Court:" was that some business you were doing for the Trust Company?

384 Mr. Rosenberger: At what time?

Mr. Smith: The date here is January 12, 1903, expenses for trip on January 9th and 12th.

Mr. Smith: So that you were performing some services for the Guardian Trust Company at that time?

Mr. Braley: Yes.

Mr. Smith: Here is another item: "To cash for expenses on briefs in Chicago Zinc Mining Case"; was that litigation or something you were doing for the Guardian Trust Company during that period?

Mr. Braley: I don't remember the case.

Mr. Smith: How long had the case of Jones v. Hamm been pending when you went to the Supreme Court and argued it in January, 1903?

Mr. Braley: Well, I should imagine at least two years.

Mr. Smith: Yes; and you had been performing services in that case during that time?

Mr. Brailey: What services were necessary to perform, yes.

Mr. Smith: That had nothing to do with this Cambria litigation at all?

Mr. Braley: Nothing at all.

Mr. Smith: And you have no recollection that the Chicago Zinc Mining Case had anything to do with it?

Mr. Braley: I can't say about that.

The Master: Pardon me, what is it you are reading from?

Mr. Smith: From that exhibit they filed this morning.

The Master: From what case?

Mr. Smith: The Trimble & Braley case.

The Master: Was that before the Master?

Mr. Smith: Yes, this is before the Master. It is in the amended petition they filed there, I think. I am reading this from the report of the Referee, I think.

Mr. Smith: I also see reference here to cash for copy of opinion of the court in Moore v. Jones; what was that case, was that something you had in the Supreme Court of
385 Missouri?

Mr. Rosenberger: What date?

Mr. Smith: The money was paid February 21, 1903.

Mr. Braley: Moore against whom?

Mr. Smith: Moore against Jones?

Mr. Braley: I don't remember that case.

Mr. Smith: If there was such a case and you were making a charge for it it was some service you were performing for the Trust Company?

Mr. Braley: Yes.

Mr. Smith: And you don't remember how much time was given to that case, or what it was?

Mr. Braley: I don't remember what it was. Never knew of any Jones case except this Jones-Hamm case.

Mr. Smith: Now under March 4, 1904, there is an item: "To expenses C. A. Braley and Wash Adams to Sherman, Texas, $45.00. You were giving some attention to the case in Texas during that time, were you?

Mr. Braley: The Port Arthur Channel & Dock case.

Mr. Smith: Yes; and that was not part of this Cambria litigation?

Mr. Braley: Well, I can't recollect, Mr. Smith, whether it was involved. It was in reference to the Channel & Dock and they were all in the Pittsburg & Gulf case rather.

The Master: Pardon me: do you remember, was the Channel & Dock in the reorganization of the Kansas City Southern?

Mr. Rosenberger: Yes.

The Witness: We deposited bonds and stock in the reorganization and I think it must have been in the reorganized plan of the Philadelphia committee.

The Master: What is that?

Mr. Rosenberger: Philadelphia plan, Philadelphia committee.

Mr. Smith: There was much litigation over that Port Arthur Channel & Dock question, was there not?

386 Mr. Rosenberger: I object to that as too indefinite a question.

The Master: It is cross examination; go ahead.

To which last action and ruling of the Master, the Guardian Trust Company, by its counsel, at the time duly excepted.

Mr. Braley: Well, there was—there was a foreclosure proceeding and, as I remember it, there wasn't much litigation. There was more time spent on the reorganization than there was on the litigation.

Mr. Smith: Don't you remember, Mr. Braley, there was a very hot contest over that and that a large amount of testimony was taken?

Mr. Braley: In what?

Mr. Smith: In that case, in the Texas case; large amount of testimony taken in it in which the Port Arthur Channel & Dock Company was claiming a million and a half dollars against the Trust Company?

Mr. Rosenberger: I object to that as an unwarranted assumption.

The Master: So far as that objection is concerned, this is cross examination and I am going to be very liberal.

To which last action and ruling of the Master, the Guardian Trust Company, by its counsel, at the time duly excepted.

Mr. Braley: At a certain time I think, I know Mr. Frank Hagerman and I took testimony in Philadelphia, if I remember right, on the Channel & Dock case. I remember another time Wash Adams and I went to Port Arthur to take evidence in the Channel & Dock case and went from there to

see Judge Bryant at Denison, Texas. Now that was the time that I took trips, trips that I took on the Channel & Dock case, as I remember.

Mr. Smith: Is that all the work that was done in that case by anybody?

Mr. Braley: They filed their pleadings and took testimony, whatever it was.

Mr. Smith: But your recollection is it was a very insignificant thing, this Texas litigation?

387 Mr. Braley: The Guardian Trust Company had a bill against the Channel & Dock Company of $20,000.00, more or less, if I remember right, and I think the Channel & Dock case was settled; settled by agreement between Mr. Pam and Mr. Sam Moore.

The Master: Max Pam?

Mr. Braley: Yes.

Mr. Smith: Mr. Braley, again I see another entry here on March 27, 1903: "Expenses of C. A. Braley to Joplin, Missouri, March 26th to 28th in Zinc case"; what was that?

Mr. Braley: That was the foreclosure, I think, of the Orannoco Mining Company.

Mr. Smith: That was service you rendered for the Guardian Trust Company?

Mr. Braley: They were part stockholders, among a lot of other stockholders; they were for minor stockholders.

Mr. Smith: But that was service you were rendering for the Guardian Trust Company?

Mr. Braley: Yes, sir.

Mr. Smith: And it had nothing to do with this Cambria litigation?

Mr. Braley: No, sir; Mr. Smith, nothing to do on the record, but the receivership was prompted by Lidenburg, Thalma & Company, who were also in the litigation up here.

Mr. Smith: But you don't mean to say that the Cambria litigation produced this other litigation?

Mr. Braley: No.

Mr. Rosenberger: You don't seem to say the contrary either, do you?

Mr. Smith: I object to that, because that is carrying the burden of proof a little far, I imagine.

Mr. Rosenberger: We expect to show—we don't make the charge yet—it was all part and parcel of the same scheme. And those bills were filed the same day, one in Port Arthur and one here; all timed to take place at the same time; all part of the reorganization plan.

388 Mr. Smith: Let me ask you, Mr. Rosenberger; is it your purpose here to claim that the expenses incurred in the Texas litigation are chargeable in this litigation as costs between solicitor and client?

Mr. Rosenberger: Yes. We have a double theory about that matter; the first is, that the filing of the Texas suit by the Barnett & Record Company, which was the plaintiff in that case, corresponding to the position of the Cambria case up here, was a part and parcel of the same plan by the reorganization committee and the Kansas City Southern Company to engross the terminal properties and bring them under the lien of the Kansas City Southern's mortgage; all part and parcel of one plan. That is one branch of our contention. The other is: that in respect to the Mecartney suit, the fee, in which some services were rendered in the Texas case, we expect to show the services rendered by Mecartney in the Texas case were comparatively insignificant as compared to the services rendered in this Cambria case. In other words, that—

Mr. Smith: (Interrupting) Are you trying to load into this case attorney fees incurred in the Texas litigation?

Mr. Rosenberger: Well, I don't want to answer that question in the form in which it is propounded. We are not trying to load anything on anybody.

Mr. Smith: I just wanted to know whether that was the situation.

Mr. Crane: To put it milder, are you trying to collect here for those fees?

Mr. Rosenberger: Yes, sir, absolutely.

Mr. Smith: Regardless of your settlement of that litigation and agreement in reference to the payment of costs in that litigation?

Mr. Rosenberger: Yes.

Mr. Smith: Judgment in that case was entered by agreement between you and the Kansas City Southern Railway Company and the Port Arthur Channel & Dock Company, that is to be ignored.

Mr. Rosenberger: Yes; and, furthermore, that services rendered by attorneys in the Texas case, as compared
389 with these enormous litigations here in Kansas City, were compartively insignificant.

Mr. Crane: Well, what is the difference, if you are trying to collect them? Doesn't make any difference whether significant or insignificant, we are entitled to all the defenses we have.

Mr. Rosenberger: Well, one is collectible as a whole, and even if it isn't, the services rendered in the Texas case and charged for by the attorneys are of trifling consequence as compared to services rendered in this terrific litigation here in Kansas City.

Mr. Smith: Mr. Braley, I will read you another entry from the petition: "April 8, 1903, to cash for telegram to clerk of court to Trimble in Port Arthur Channel & Dock case"; and on the same day: "To cash for telegram April 9th to Clerk of court from Trimble & Braley"; and on the same day: "To cash for telegram Trimble & Braley to clerk in Port Arthur Channel & Dock case"; those all indicate you were giving some attention to the Port Arthur Channel & Dock Company case during that time?

Mr. Braley: Indicates we were looking after their business.

Mr. Smith: On April 22nd I see item: "Cash for expenses—

The Master: What year?

Mr. Smith: 1903.

Mr. Smith: (Continuing) "To cash for expenses C. A. Braley to Sherman, Texas, $25.68; what was that about? Was that in this litigation?

Mr. Braley: As I remember it, it was a hearing before Judge Bryant at which Wash Adams and a man in the Southern's office by the name of Lucas was present.

Mr. Smith: Well, I see on March 20th—going back to that item—March 20, 1903, you and Mr. Adams made a trip down

there and then did you make another trip on April 22nd down there?

Mr. Bailey: I don't remember.

Mr. Smith: On April 29, 1903; "To cash for telephone C. A. Braley to Scott in Chicago Zinc Mining Company case"; do you recall what that was?

390 Mr. Braley: No, I do not.

Mr. Smith: It wasn't part of this litigation, at any rate?

Mr. Braley: No.

Mr. Smith: Under May 4, 1903: "To cash for telegram J. McD. Trimble to C. A. Braley at Sherman, Texas"; do you remember that was the third trip you had made down there inside of two months?

Mr. Braley: No, I do not remember.

Mr. Rosenberger: Might have been on the same trip and charge made at a different time, might it not?

Mr. Braley: Could have been.

Mr. Smith: This $500.00 a month that was allowed to Mr. Trimble, that went into the firm account of Trimble & Braley?

Mr. Braley: I so testified this morning.

Mr. Smith: That is what I understood. Now here is June 30, 1903: "To cash for telephone to Wilcox at Chicago in Chicago Zinc Mining case"; does that refresh your recollection about what that Zinc Mining case was?

Mr. Braley: No, I don't know what the case was; but I know that F. B. Wilcox had charge of a mine down at Orannoco, which was called the Chicago Zinc Company's; but I don't remember the litigation, if there was any.

Mr. Smith: Now in October 30, 1903, is an item: "To cash for copy of order appointing receiver for O. K. C. & E. Railroad Company"; what was that?

Mr. Braley: That was part of the Northern Connecting Railway system.

Mr. Smith: Was that being foreclosed during that period?

Mr. Braley: I can't say, Mr. Smith.

Mr. Smith: You wouldn't attempt to say it wasn't being foreclosed during that period.

Mr. Braley: I would not.

The Master: Pardon me, Mr. Smith: The Master is a little bit confused: these payments of $500.00 a
391 month, $466.66 a month to J. McD. Trimble, which you say the firm of Trimble & Braley get the benefit of, running over a period from November, 1902, to October, 1904, did Trimble & Braley or Judge Trimble receive further compensation for special services, or did that cover everything?

Mr. Braley: I don't remember that we got any further compensation for the Guardian Trust Company's business.

The Master: That is what I mean.

Mr. Braley: There were other companies which were allied to that.

The Master: As far as the Guardian Trust Company was concerned those annual retainers paid for all the services rendered?

Mr. Braley: Yes, sir; that was my understanding.

Mr. Smith: Mr. Braley, I think this ought to be thoroughly understood, but I will ask it again; that retainer that was covered by that provision in the minutes of the Guardian Trust Company of $500.00 a month, or whatever it may be, to Mr. Trimble, what was the amount that was paid for the firm of Trimble & Braley and the Guardian Trust Company was entitled to advice and counsel and services of either you and Mr. Trimble or the firm for their retainer?

Mr. Braley: Yes.

Mr. Smith: I notice from the record in the Shedd case, pages 2038 et seq., amongst the assets listed of the Trust Company; twenty-two bonds of the Omaha, Kansas City & Eastern Railroad; sixteen hundred ninety-five shares of International Light, Heat & Power Company; sixty-eight shares of the Crescent Elevator Company; account against Louis Lombard; account against Durango Railway Concession; were those all matters that were requring the attention of the legal department during that period?

Mr. Braley: Well, not much, if any, Mr. Smith; depends upon whether it was in litigation or not; might have been just on the books.

Mr. Smith: Did you have any controversy over the Northern Townsite Company?

Mr. Braley: None that I remember of.

Mr. Smith: What were the Fisheries bonds, do you know anything about them?

392 Mr. Braley: I am of the opinion that those were some bonds taken by the Trust Company to stock a fishery plant down at Sabine Pass, Texas.

Mr. Smith: Did you have to give advice on those matters?

Mr. Braley: Wasn't anything to give any advice about, except they were purchased and put on the books.

Mr. Smith: During that period of time was there any litigation ever came up of First National Bank against the Guardian Trust Company as an endorser on a note of the Suburban Belt?

Mr. Braley: Yes, sir.

Mr. Smith: And the trial of that case was handled by your firm, was it?

Mr. Braley: By Mr. Trimble.

Mr. Crane: What time was that?

Mr. Smith: I can't give you the exact time, but it was during this period.

Mr. Crane: Well, will the record show when it was?

Mr. Smith: Yes, I think it will be shown some time before we get through with it, because it will probably come up, I believe it is shown in here.

Mr. Smith: And that case was tried in the Circuit Court here in Kansas City and went to the Supreme Court?

Mr. Braley: I think it did.

Mr. Rosenberger: Mr. Braley, don't you recall that the arguments in the First National Bank case vs. Guardian Trust Company were made in the year 1905 and nearly a year after you and Judge Trimble had retired from all connection with this Cambria case?

Mr. Braley: I don't have any recollection of dates, Mr. Rosenberger.

Mr. Smith: You mean the argument in the Supreme Court?

Mr. Rosenbeger: Yes, the handling of the case in the Supreme Court.

393 Mr. Smith: Yes; but I am talking about the trial of it in the Circuit Court.

Mr. Rosenberger: I know, Mr. Mecartney represented them and charged a fee for it and collected it. No charge is made for it in this account at all.

Mr. Smith: Yes, but I am talking about the earlier history of the case. He didn't try the case.

Mr. Rosenberger: We sued on the note; don't know what trial there was to it except a legal question involved in the State court.

Mr. Smith: How much was he paid for his services in the Supreme Court?

Mr. Rosenberger: I really don't know, but I know this: that no effort is being made to charge the Kansas City Southern Company with it, so I don't think it is pertinent question.

Mr. Smith: I think it is pertinent to this case. The litigation was going on during this litigation.

The Witness: The record shows for itself, Mr. Smith.

Mr. Smith: Yes, I think so.

Mr. Rosenberger: I know the Guardian Trust Company got stuck for that judgment and I included it in our claim against the Belt Company and we collected for it, and that judgment that was finally rendered in the United States Court of Appeals was included in our claim.

Mr. Smith: That case was instituted about October, 1900, according to this thing, because you were charging a retainer for services in preparing and filing answer in suit for twenty-five thousand dollars on note made by the Suburban Belt Company and endorsed by the Trust Company.

The Master: In 1900?

Mr. Smith: In 1900; that is when the retainer was.

Mr. Smith: Isn't that the fact?

Mr. Braley: I could not tell you.

394 Mr. Rosenberger: What date in 1900?

Mr. Smith: October 9, 1900. I don't say that is the date it was begun. I say that is the date this record shows from your petition you have given us here the retainer was charged.

The Master: You say it was not argued in the Supreme Court until 1905?

Mr. Rosenberger: Yes, that was after Mecartney came in.

Mr. Smith: Now I notice in this statement appearing on page 2093 of the Shedd record, "Settlement of Josiah Quincy case", do you know what that was?

Mr. Rosenberger: What date?

Mr. Smith: I can't tell you that, Mr. Rosenberger. It is a statement that is made as of from October 22, 1904, to October 22, 1905.

Mr. Rosenberger: Well, that is during Mr. Mecartney's term.

Mr. Smith: I just asked him if he knew anything about it. It may be possible that is true.

Mr. Smith: Did I ask you whether you handled the Northern Connecting foreclosure proceedings, I believe I asked you that question, do you remember whether you did?

Mr. Braley: I don't remember.

Mr. Rosenberger: No; I will tell you who handled that, Mr. Solomon who was Mr. Cooper's partner.

Mr. Smith: Well, didn't you file some pleadings in that or make some intervention in it?

Mr. Braley: I was up there in the case once, I think it was on a matter about the stock of the company, if I remember right.

Mr. Smith: Some matters you were representing—the Trust Company in?

Mr. Braley: No, no; I may have represented them, but what I am speaking of was about representing a matter of my own.

395 Mr. Smith: Did I ask you whether the Orient was being organized during this period of time?

The Master: Yes; he said it was while they were down on Seventh Street.

Mr. Smith: You stated in answer to a question that this retainer did not cover services for subsididary companies, but if the Trust Company had relations with those subsidiary companies or performed services for them that Trimble & Braley performed any service for the Trust Company in reference to that matter and the retainer covered those services, did it not, services to the Trust Company?

Mr. Braley: I might answer this: suppose one of those companies got into trouble and the Trust Company owned one-twelfth of the stock of that company, it wouldn't be charged to the Trust Company, but charged to the original company.

Mr. Smith: Yes, but services of the Trust Company with reference to this, your services to the Trust Company with reference to any transactions with a subsidiary company were included in your retainer?

Mr. Braley: Not necessarily.

The Master: He means they would have to pay one-tenth of it?

Mr. Smith: No.

Mr. Rosenberger: No.

Mr. Smith: I think you misunderstood. What you said was this, that if there was any question between the Trust Company and the subsidiary company where services were to be rendered to both of them the services were charged to the subsidiary company?

Mr. Braley: That is unless the Trust Company had the original suit against the subsidiary company, which they didn't generally have. I mean our fees didn't include services for subsidiary companies.

The Master: That is what I understood.

396 Mr. Smith: I understood if there were services performed the services were charged to that subsidiary company.

Mr. Smith: Were there any services that were performed by you for the Trust Company with reference to the Second Street Improvement Company's stock during that period?

Mr. Braley: I don't remember of any. That was a separate corporation, and represented all the stockholders, but don't remember there was any contest between the stockholders.

On redirect examination by Mr. Rosenberger, Mr. Braley testified as follows:

Mr. Rosenberger: Mr. Braley, Mr. Smith has directed your attention to the charge of an expense item for cost of the certified copy of the decree of foreclosure in the Kansas City & Northern Connecting Railroad Company case, do you recall that that railroad company, which I will call the Northern Company, was built by the Kansas City Suburban Belt as contractor in return for certain stocks and bonds of the Northern Road?

Mr. Braley: Yes, the Suburban Belt had a contract to build a certain road for it.

Mr. Rosenberger: Do you recall in the Cambria case a great outcry was made in bills of complaint of the Belt receivers, and later by the Southern Company, claiming that the Belt Company had overreached the Northern Company in the performance of that contract?

Mr. Braley: I don't recall that.

Mr. Rosenberger: Well, do you recall that the accounts of the Northern Connecting Railroad Company with the Kansas City City Suburban Belt Railroad Company and also with the Guardian Trust Company in disposing of the securities of the Northern Company on behalf of the Belt Company were involved in the accounting of this Cambria suit?

Mr. Braley: I know there was a question as to accounting and expense, but I don't know in what suit it came in.

397 Mr. Rosenberger: Don't you know there was a vast amount of testimony introduced by the Southern company through their auditor, Mr. Johnson, and perhaps by Mr. Mecartney, in the effort to sustain the charges that were being made by the Southern Company and the Cambria Company and Belt receivers in respect to the building of the Northern Company?

Mr. Smith: He hasn't said he even attended—

Mr. Braley: (Interrupting) I don't recall it, Mr. Rosenberger, I had very little to do with that litigation.

Mr. Rosenberger: You don't recall, in fact, how it happened you wanted a certified copy of that foreclosure decree?

Mr. Braley: No, sir.

Mr. Rosenberger: I think that is all.

Mr. Rosenberger: Now, if the Master please. I assume it is not necessary to introduce in evidence here any of the files in the court which appointed the Master in any of the litigation which is referred to in this account. As, for example, the files in the Cambria case; the files in the Shedd case; the files in the Bierce case; the files in the foreclosure suits brought by the Provident Life & Trust Company against the Belt Company and its constituent or dependent railroad companies.

The Master: Well, the Master will say off hand, he being a mere appointee of the Federal Court and acting under its control, that the Master would take judicial notice of the entire files in the Federal Court.

Mr. Smith: Well, in addition to my written objections, I want to make an objection to that: we are agreeable to the proposition that the Master and the District Court may have before them the complete record in this case so far as it is presented in the record of the Supreme Court of the United States, the printed volume. We object to the assumption
that all other matters in other litigations in which
398 the Guardian Trust Company has been a party may be deemed before this court. We were not parties to the Shedd case; we were not parties to the Bierce case and I don't know on what theory those things can be treated as in evidence here.

Mr. Rosenberger: I am not alluding to the Shedd case.

Mr. Smith: You said Shedd and Bierce cases.

Mr. Rosenberger: No, I said the Bierce case.

Mr. Smith: The Bierce case is not part of the litigation and we object to the records in the Bierce case, except as they are offered. And I think we ought to have some sort of understanding or stipulation about what may be before the Master in this case, because if everything in this case that is taken in the testimony taken in this case is before the Master, why that means all this evidence that has been taken heretofore. Now I don't understand that this record is going to be as big as that.

Mr. Rosenberger: I don't want anything I said to be tortured into the idea I have offered all of this in evidence. It is but for the purpose of avoiding that I make the inquiry with a view of an understanding with the Master about it. Now, for example, there is this enormous record that was made before the Special Master in the Cambria suit, the very case in which you are sitting. I assume that that is open to the Master for his examination without being offered in evidence. I think that the court will certainly take judicial notice of the files in this case.

The Master: I think the Master—

Mr. Rosenberger: (Interrupting) Just a moment, I am not through.

Mr. Smith: Before your Honor rules on that question, I should like to make an objection.

The Master: I am not ruling on it. I am just making the remark that the Master would feel very much inclined to feel at liberty to look at anything which was in the record in this case. I haven't ruled on it, but that is my view.

399 Mr. Smith: Here is the point of it: of course, it is understood that your Honor feels under the constraining hand in disposing of certain issues in this case according to the opinion of the District Court.

The Master: Oh yes.

Mr. Smith: Now there was an intimation here by Mr. Rosenberger in the informal conference that it is to be presumed Judge Van Valkenburgh saw the full evidence. Well, Judge Van Valkenburgh didn't see the full evidence. If there is to be a hearing on this case and certain evidence is to be excluded I would assume that it must, it cannot be said hereafter the Master had this evidence and examined it. I think we should have an understanding as to just what the Master is going to view in this case. If you are going into this evidence back there, then we want to present that evidence.

The Master: What do you mean by "that evidence"? I don't know that I can follow you.

Mr. Crane: Mr. Ashley, Mr. Smith means this, when you come to make up your report.

The Master: Yes.

Mr. Crane: We want to be able to know exactly what you have taken into consideration. For instance, it wouldn't

be a matter of record or it wouldn't be fair to us if your Honor at the conclusion of this case is going to go to the testimony. There migth be some portion of it that we didn't know anything about, or that your report wouldn't disclose, or anything of that kind. But if you said, "I have considered this testimony taken from that record there," something of that kind, why, all parties know just where you stand on that; what he wants you to go to and what we want you to go to, then the record before the court is clear.

The Master: Are you speaking here about the issue on good faith?

Mr. Crane: I am speaking of the whole action, the whole thing.

Mr. Smith: Everything involved in this matter.

The Master: We are foreclosed on the issue of presenting testimony on good faith.

400 Mr. Smith: Yes; but we are saving our record on that.

The Master: Certainly; certainly.

Mr. Smith: Now then, we don't want it to go to the Court of Appeals that the Master has ruled on that evidence taken before Judge Douglass.

The Master: Oh no.

Mr. Smith: That is what I have got in my mind exactly.

Mr. Moore: We want to have it so we can make our record up for the Court of Appeals.

Mr. Rosenberger: I concede opposing counsel are at liberty to refer, without formal introduction in evidence, to any part of the files in this Cambria and its related litigation, in the District Court. I consider I am at liberty to do the same thing; in fact, I consider that is before the court. The Master is at liberty to examine it.

The Master: The Master might feel at liberty, but the Master feels the opinion has foreclosed him on that issue of good faith and he is not going to pass on how much evidence the Federal Court has—or the District Court has, as he concludes he is bound by the United States Court of Appeals in its opinion.

Mr. Smith: What Mr. Rosenberger would like to do in this case I think would be to have your Honor exclude a con-

sideration of all of this evidence and then say, when we go into the appellate court, if we must, I have brought up all of that record, all there, and the Master had a perfect right to go into it and it is to be presumed he examined that evidence and found the issue, as a matter of fact, against us on these issues involved before the Federal Court.

The Master: I don't think that would be fair.

Mr. Smith: What kind of a record have we got?

The Master: You don't think that would be fair, do you?

Mr. Rosenberger: I wasn't paying strict attention to what Mr. Smith was saying.

The Master: Mr. Smith says this: If by the ruling or memorandum opinion of Judge Van Valkenburgh—he
401 acting, as he says, on the opinion of the United States Circuit Court of Appeals—these gentlemen are foreclosed from going into the question of good faith in the bringing of these suits, or the Cambria is foreclosed by the Judge's memorandum opinion that they were not brought in good faith, then he does not want the report of the Master to be based on any of the evidence in that court; nor does he want you in the Court of Appeals to contend that the Master had the evidence before him when he made his report. Is that it?

Mr. Smith: Yes, sir, that is it. In other words, when you make your report we want your report to cover the thing that was heard by you, and nothing else.

Mr. Crane: He wants the Master to simply submit and base his report on his own investigation, or base his report on the instructions he had received from the Federal Court.

Mr. Smith: And evidence adduced before the Master.

Mr. Rosenberger: I think that is perfectly true.

The Master: That seems fair.

Mr. Rosenberger: And I don't want anything I said here to indicate I am willing that anything else should be done. But when it comes to determining whether a certain paper was filed on a certain day, what that paper was in this case, this Cambria litigation, I would consider that it would be wholly unnecessary; and, in fact, improper to offer that paper in evidence. It is part of the files of the court.

The Master: I think you are perfectly right.

Mr. Smith: Let me just make this suggestion: here is a record now offered in the Supreme Court of the United States; that is the record before the Court of Appeals.

The Master: In what case?

Mr. Smith: In this Cambria case.

Mr. Rosenberger: That is just what we say, Mr. Smith; he had the entire record before him when he made his ruling.

Mr. Smith: Who did?

402 Mr. Rosenberger: Judge Van Valkenburgh.

Mr. Smith: Oh no, he didn't have anything of the kind. You know perfectly well Judge Van Valkenburgh never saw a syllable of that case.

Mr. Rosenberger: Mr. Smith, you mean to say Judge Van Valkenburgh was required to close his eyes to the entire record had or made in this suit?

Mr. Smith: I am saying, Mr. Rosenberger, when you and I were arguing this case before Judge Van Valkenburgh we were arguing a naked proposition of law, without one particle of evidence before that court, except what was there in this record of the Supreme Court of the United States; and not another thing there.

Mr. Crane: Mr. Rosenberger, Judge Van Valkenburgh said over and over again that he was guided by that opinion of the Court of Appeals and he didn't care to go back of it; didn't care to go into the evidence, and wasn't going to. He was going to take that for what he thought it meant. That was his attitude.

Mr. Rosenberger: Yes, but what you were trying to do before Judge Van Valkenburgh was to entirely re-open that case and introduce evidence at this time for the purpose of demonstrating that the Southern Company and the Cambria Company and the Provident Company brought these suits in good faith.

Mr. Crane: That is one thing we were trying to do.

Mr. Rosenberger: That is the evidence he said he wouldn't hear; but to say he didn't have the record in this Cambria case before him judicially is to question what his right was as judge of that court, having in charge the files and papers of that court.

Mr. Crane: He may have had the right, but he certainly didn't do it.

Mr. Smith: We never talked about the evidence up
403 there when we were arguing about the form of the decree and when he handed down his opinion on the form of decree.

Mr. Rosenberger: If I have any conception of the rules in equity in the Federal Courts it is that the Chancellor in the eye of the law has before him all the time every paper and every document that is on file in that suit.

Mr. Smith: Well, we also have an idea that in equity, Mr. Rosenberger, when a Chancellor passes on the question without examination of evidence it is not to be assumed he has examined evidence that he hasn't seen.

Mr. Rosenberger: Now if you are talking about evidence you were offering before Judge Van Valkenburgh, you were asking for an opportunity at that time to present evidence to vindicate your good faith. Judge Van Valkenburgh declined to let you do that. That is the only evidence I heard you talking about.

Mr. Smith: You don't remember you went up there and presented a form of decree and we were arguing that then without any discussion of evidence, or anything of the kind; and his memorandum opinion was handed down without any reference—

The Master: (Interrupting) Arguing what question?

Mr. Rosenberger: The question of taxability of the costs.

Mr. Smith: Let me make this statement so you will know what the matter was. There was a motion filed for an entry of final decree in this case.

The Master: By whom?

Mr. Smith: By the Guardian Trust Company and its Receiver, maybe Shedd, I have forgotten which, but I think both.

Mr. Crane: Both.

Mr. Smith: Both; and we had a hearing on that matter in November, as I recall it, 1922, and there was presented at
that time a form of decree prepared by Mr. Rosen-
404 berger to be entered in the case and we prepared a form of decree to be entered in the case and the qustion that

was considered by the court was the language that was included in Mr. Rosenberger's form of decree that costs should be taxed as between solicitor and client; and that was the only thing argued on that occasion; and that is what the memorandum opinion was handed down upon. There was no evidence offered. When that question was argued we told the court—in my part of that argument I told him I didn't know anything about the facts of the case; I had never examined the case and if you will read that memorandum opinion you will see he says he is bound by the decision of the Court of Appeals and not by any evidence he has read in this case, in any finding he has made.

Mr. Rosenberger: I think we are going far afield in this discussion here.

Mr. Smith: I think we are trying to protect our rights.

Mr. Rosenberger: The question before Judge Van Valkenburgh was one of law and upon the record that was before him, including the opinion of the Court of Appeals. All in the world that I am urging here or suggesting here is this: suppose it became material here to establish the date on which the Cambria suit was filed, is it going to be argued that I have got to go and get the original bill of complaint and offer it in evidence to show the date on which it was filed? Suppose the question arises as to the contents of that bill of complaint, have I got to go and get that bill of complaint and formally offer it in evidence and make it a part of the Master's record, when it is part of the files in this case? I say again, that the rule is thoroughly established that in a cause in equity every paper, every document and file in the suit is known judicially by the court, and, therefore, I don't feel it incumbent upon me to offer it in evidence.

The Master: You want it offered in evidence?

Mr. Smith: I want just simply this: I am perfectly willing to consent to everything the Court of Appeals had before it when it decided this case shall be deemed presented
405 to the Master and the District Court. That is all included. But what he is saying about the date of the filing of these things is all in this record. That is what the Court of Appeals decided the case on, if they made any decision upon this question of costs in his favor it is based on that record.

The Master: What about that, Mr. Rosenberger? Are you satisfied?

Mr. Rosenberger: Not at all. As I say, I am insisting here that Judge Van Valkenburgh and you, the Master, judicially know the files in this case and its dependent and related litigation and it is not incumbent on us to drag those files over here and encumber the record with them and unless the Master feels that some contrary rule is in force, I don't propose to do it. I don't propose to be a party to weighing down this record with all that mass of documents, bales of it.

The Master: The Master doesn't wish to do any injustice to parties to this cause, but the Master would certainly feel at liberty to at least look at the files in this cause if he thought it was important. But the thing that seems to be disturbing the representatives of the Kansas City Southern is that as this question of good faith is foreclosed and they are foreclosed from presenting any evidence on that subject, they don't want to go into the upper court, if they appeal from the District Court—if the Federal Court should confirm the Master and they should go up on appeal—they don't want to go into the Federal Court and find themselves and be foreclosed from introducing any evidence to show their good faith, on the theory that the memorandum opinion already mentioned by the Federal Court is based on the evidence. They claim it was not based on evidence and that Judge Van Valkenburgh said he felt bound to follow the Court of Appeals' opinion. I do remember he does say that very distinctly. Of course, as to how far he examined the evidence in the files in his own court, why, nobody knows but himself, and I don't suppose he is accountable. That is his own matter.

Mr. Smith: I think, your Honor, has that advantage—and it is always a mistake for a lawyer to talk when he has a ruling in his favor—but we have got to make a record
406 in this case. What is the Court of Appeals going to say, if we have an understanding here that all these files are before the Master? Suppose they say: "You haven't brought all these files up here; may be there is something important that is not here, may be something that will help you out."

Mr. Rosenberger: Let me simplify this: I am not asking for any stipulations about this. I am willing to stand on what I believe to be the law about it and my whole purpose in making the remark which precipitated this discussion was to simply indicate to the Master my theory of the case is, all these files are before the Master. If I am wrong about it, I am going to have to pay the penalty. If I am right, I am right.

The Master: And the Master frankly says that is something he is in doubt about. In the little investigation I have made now I think in this sort of affidavit, stipulation you formerly made that you were going to offer here what you believed Mr. Sam Moore would testify to; you were going to offer it, then as the Master felt precluded by the memorandum opinion of the court that these suits were not brought in good faith the Master would exclude that evidence. Now exclude it on the theory that that matter had been foreclosed by the memorandum opinion, because I could not exclude it on any other theory, because if I did, as I understand the law of chancery, why, the evidence would have to be admitted and sent up, because the Appellate Court could not judge. They would want to send it back here because we had excluded certain evidence. I feel my justification for letting you offer what you think you can prove by Mr. Sam Moore and then excluding it is that memorandum opinion as based on that question. That is my view of it.

Mr. Crane: In other words—

The Master: (Interrupting) I am foreclosed.

Mr. Smith: In other words, there doesn't rest on you the duty or obligation of hearing that question at all. In other words, you are not hearing that question.

407 The Master: I think I am foreclosed.

Mr. Smith: We think if you would go into that record you wouldn't have any difficulty in finding that this litigation was instituted in good faith and on some good grounds.

The Master: I am not going against the ruling of the Federal Court or the Court of Appeals.

Mr. Crane: I don't believe there is such between us. I agree with Mr. Rosenberger and I am not going to ask him to bring over all the files and papers in the case.

Mr. Rosenberger: They are all here.

Mr. Crane: The record of the Supreme Court is not here. They take up the entire record.

Mr. Rosenberger: No, that is not. That is the reason of the praecipe, bringing into the record certain parts of it.

Mr. Smith: This record of the Court of Appeals was taken to the Supreme Court and they took everything in the Court of Appeals and took it up to the Supreme Court.

The Master: I understand, but the Master doesn't understand from that they got everything in the District Court.

Mr. Smith: Oh no, naturally not. And I gather from Mr. Mecartney's evidence there were three hundred orders made over there.

The Master: Now I am not going to preclude myself from looking at something if I want a date.

Mr. Smith: You will find it here.

The Master: May be something that isn't there.

Mr. Smith: And we think this now: I don't think, as Mr. Crane says, it makes any particular amount of difference, but I don't think, while there is nothing that anybody thinks is going to hurt them if you are going over there to see them, I think the decision you will have to make here has got to be on the evidence offered before you.

The Master: I think so too. I am not going to foreclose myself, however, from looking at a paper. I am not
408 going to be unfair to you, if I can help it.

Mr. Smith: If you do look at it it will go in the record. Now that is what I am figuring on.

The Master: I mean I am not going to be unfair on that proposition. I understand I am foreclosed from considering good faith and I am going to exclude your offer of testimony on good faith, on that theory. Now if I am foreclosed, I am not going further and dig out something that I am foreclosed on.

Thereupon, the Master adjourned the further taking of testimony in the above entitled cause until Friday, the 1st day of February, 1924, at two o'clock P. M.

* * * * * * *

Friday, February 1, 1924.

Pursuant to adjournment as above stated, on Friday, February 1, 1924, at two o'clock P. M. the Master resumed the further hearing of testimony in the above entitled cause. The parties appeared as before.

Thereupon the following proceedings were had:

Thereupon Mr. Rosenberger offered in evidence the opinion and decision of the United States Circuit Court of Appeals, reported in 280 Fed. 64, in Mecartney vs. Guardian

Trust Company, for attorney's fees due him subsequent to March 27, 1908, said opinion being offered in support of Item No. 136.

Mr. Smith: The Kansas City Southern Railway Company and the Cambria Steel Company objected to the introduction of this opinion in evidence on the grounds set forth in numbered paragraphs 1 to 10, inclusive, of their written statement of objections. And for the following reasons:

(1) The services rendered by him in this litigation after the final decree of June 25, 1910, were voluntary services. In support of this objection we offer in evidence the following statement contained in 'Suggestions in Support of Petition for Leave', etc., purporting to be signed by Messrs. Newell H. Clapp and Enoch J. Price, but which state-
409 ment was in fact the statement of H. S. Mecartney.

It is apparent from the volume of the record here that due diligence has been used to prepare this application. In fact, without Mr. Mecartney's aid—volunteered without compensation, it would scarcely have been possible to present it thus early. (Page 966 printed record in the United States Supreme Court in this cause).

In his Testimony on this subject, MR. MECARTNEY testified:

Q. I find that in the transcript that on January 20th, 1913, the following order was made: 'These cases came on to be heard and on motion of Edward S. Shedd, et al., petitioners [—] for leave to file suggestions, etc., (reading same). Are those suggestions that are there referred to the same as Exhibit 117 which you have identified. A. They are.

Q. Pursuant to that order, did you file these suggestions with the court? A. I did. I did it pursuant to both these orders. (Pages 1415, 16 record in Mecartney case in state court).

(2) If it was Mr. Mecartney who presented in the Court of Appeals the contention that The Kansas City Southern Railway Company was liable for the debts of the Kansas City Suburban Belt Railroad Company, and that judgment should be entered against the Southern Company, the fact that such contention was not made by other counsel for the Trust Company in that case was because of the conduct of Mr. Mecartney as counsel for the Trust Company prior to that time in putting the issues in this case in such shape that his successors as counsel for the Trust Company in charge of the litigation were led to believe that that issue could not be pre-

sented in the Court of Appeals. In his argument before Judge McPherson against the application for the second injunction against the prosecution of the state court cases Mr. Mecartney, in speaking of the Southern Company said:

It is not an affirmative claim on our part to a personal judgment—we could not get judgment on it. But, as the pleadings stand, we are not seeking personal judgment
410 against the Southern Company. In that case the Southern Company is a mere intervenor (page 57 of the argument before Judge McPherson).

I want to make this additional objection, that the statement as to the performance of services after March, 1908, is misleading. There isn't any claim that I know of that Mr. Mecartney rendered any services after March, 1908 and before June 25, 1910, the date of the final decree. I think the offer ought to be limited to whatever services were rendered by him in the Court of Appeals.

Mr. Rosenberger: Well, it is, the services I speak of are limited to those that are reviewed and discussed by the United States Circuit Court of Appeals in the decision and opinion just offered in evidence.

The foregoing objections to the introduction of said opinion were, by the Master, overruled, to which ruling the Kansas City Southern Railway Company and the Cambria Steel Company duly excepted.

The opinion and decision of the United [—] Circuit Court of Appeals, recorded in 280 Fed. 64, was thereupon received in evidence by the Master.

Said opinion, as reported in 280 Fed. 64, is hereby, pursuant to stipulation of the parties, incorporated herein by reference, in lieu of being herein set forth.

Clifford Histed thereupon duly produced as a witness on behalf of the Guardian Trust Company, being first duly sworn, testified in substance as follows:

My name is Clifford Histed, attorney at Law, Kansas City, Missouri. I have been engaged in the practice of law in Kansas City, twenty years, and during all of that time have been a partner of Mr. James H. Harkless, under the firm name Harkless and Histed. I was employed by Mr. Harry S. Mecartney to assist him in connection with the litigation

between the Guardian Trust Company and the Port
411 Arthur Channel & Dock Company and the Provident Life & Trust Company. That was in the latter part of 1904 or the first part of 1905. At the time of my employment that litigation had been pending for a number of years in the United States District Court or Circuit Court at Beaumont, Texas. That litigation was commenced by the filing of a creditor's bill at Beaumont, Texas, by the Barnett & Record Company, a creditor of the Dock Company, in which the relief asked, among other things, was a Receiver for the Dock Company.

Mr. Rosenberger: And that bill was filed in September, 1900?

Mr. Histed: I don't remember the dates, but it had been filed, pending there.

Mr. Rosenberger: Is there any dispute about that?

Mr. Smith: Filed in September, 1900, September 10, is our information.

Mr. Histed: Prior to my entry in the case, the Provident Life & Trust Company, as the Trustee in the mortgage executed by the Dock Company, and the secured bond holders had intervened in the suit and asserted claims against the Guardian Trust Company which was the defendant to the appeal of the Barnett & Record Company. Long prior to my entry in the case as assistant to Mr. Mecartney, the Guardian Trust Company had filed a cross petition against the Dock Company asserting a demand against it in the neighborhood of $20,000.00, if I remember right. My recollection as to the nature of the Trust Company's claim is very vague. I think probably it was for money advanced. Long prior to my entry into the case, the Provident Company, as Trustee, had filed a bill for the foreclosure of its mortgage against the Dock Company and that bill had ripened into a decree and sale of the property to the new Dock Company known as the Port Arthur Canal & Dock Company. The claim which the Provident Company was asserting against the Guardian Trust Company was, I think, that is was liable on stock subscriptions for capital stock to a very large amount, over a million dollars, that is stock subscriptions made to the Port Arthur Channel & Dock Company.
412 The Guardian had subscribed for capital stock of the Port Arthur Channel & Dock Company and had not paid for the stock. The Provident Company, under its creditors' bill, was seeking to make the Guardian Company pay their stock subscription. I think the amount of the

Provident Company's claim against the Trust Company on that stock subscription was a million and a half dollars. I had nothing to do with that litigation until I was employed by Mr. Mecartney, the last part of December, 1904, or the first of January, 1905. My connection with the matter ceased when the matter was wound up in May or April, 1905. After my entry into the case, no further litigation was conducted in court in the matter. Our services consisted first in informing ourselves of the situation concerning the testimony that had been taken and the state of the record and forming some opinion about the merits of the controversy and negotiating settlement. The matter was compromised and settled in April or May. All I did was to examine the papers in the case and the testimony which had been taken prior to my employment to form a conclusion as to the rights and liabilities of the respective parties and to settle the case. No testimony was taken either by me or Mr. Mecartney. I made report to Mr. Mecartney after I had formed an opinion as to the case and as to what ought to be done with it. Immediately following that report, Mr. Mecartney and Mr. Moore got together and settled the thing up.

Mr. Rosenberger. Before that statement was made, Mr. Mecartney wrote a letter to the Guardian Trust Company and recommended a settlement?

Mr. Smith: I object to that settlement because it is calling for hearsay evidence.

The Master: I can't see its materiality.

Mr. Rosenberger. The whole purpose of this testimony here, Mr. Histed's testimony, is to show the value of the services rendered by Mr. Mecartney in the Dock case, so that the Master may be able to determine what that
413 value was and if persuaded that any allowance should be made therefor will know how much to allow and, that being true, it becomes material in determining that value what the terms of the settlement were.

The Master: So far as the settlement involved expenditure of time in making contracts, I think it might be material.

Mr. Rosenberger: I think it would be material not merely in the matter of time, but in every matter involving fees the result of the thing is a very material factor. If Mr.

Mecartney had collected a million dollars, for example, it would have a very material bearing or ought to have, on your mind.

The Master: Yes.

Mr. Rosenberger: On the other hand, if he collected nothing, that is an important matter.

The Master: That is true.

Mr. Crane: Let us understand one thing; I understood you were not going to retry the Mecartney case.

The Master: No.

Mr. Crane: Now we are starting to retry it piecemeal.

Mr. Rosenberger: I can't agree with that statement.

The Master: I said this: if you could show that any part of the judgment for fees in the Mecartney case was a service that was entirely foreign to the Cambria litigation, that I would like to hear it, consider it; but I am not willing to try the Mecartney case. If you gentlemen could show some of the issues included in the judgment for services rendered were entirely foreign to the litigation, I would like to hear that testimony.

Mr. Rosenberger: I want to be clearly understood here; I don't want to be accused later of opening the door to a lot of irrelevant matter. I am not offering proof here of the value of Mr. Mecartney's services that are included in the judgment which he obtained in the State Court for
414 services in the Cambria case. But I am offering to prove what the value of his services were in the Port Arthur Channel & Dock Company case, and, for this reason; in his petition filed in the State Court, which resulted in a judgment, he brought suit in the first count of that petition for the value of services rendered by him in the Port Arthur Channel & Dock Company case as well as in the Cambria case and that ripened into a judgment on that first count. No segregation is made in that judgment as between those two law suits. Now then, the position of these gentlemen is that because Mr. Mecartney included some element which they claim was foreign to the Cambria suit, he ought not to recover anything for the enormous labor that he did in the Belt-Cambria suit.

Mr. Crane: No, that is not the situation.

Mr. Rosenberger: Let me finish.

Mr. Smith: Yes, it is; yes, it is.

Mr. Rosenberger: My answer to that, as already indicated, is that this Texas litigation was all part and parcel of the same scheme of the Southern Company, and its promoters, the reorganization committee, which is dealt with in the opinion of the Court of Appeals; and, second, that if I be wrong in that proposition, that it then becomes the duty of the Master to determine what the fair value was of the services rendered in the Texas case and make some allowance to the Southern Company for that value.

Mr. Smith: Are you through, Mr. Rosenberger, with your statement?

Mr. Rosenberger: Yes.

Mr. Smith: If the Master please, it is clearly understood that we are contending that no attorney fees can be taxed as costs in this case. That goes without saying any more about it?

The Master: Yes.

Mr. Smith: Now, then, we are contending this: that this judgment isn't binding on us, because we weren't parties to that judgment.

The Master: I understand that.

415 Mr. Smith: And we further contend if you are going to try any issue in this case as to the value of Mr. Mecartney's services the only issue that is proper to be tried here is the question of the services rendered in the Cambria case, if evidence on that issue is competent at all. Now we object to this method of getting at this fact, because the question for determination, if you are going to consider such values, is to try out the question of what services were rendered by Mr. Mecartney in the Cambria case, and not go into a foreign issue and try that and then subtract that allowance from this. Now we want to object to it for the further reason, if I haven't already stated it here, that we want to object to any evidence as to the value of these services for the purpose of taxing them as part of the costs in this case; that is, any part of the services in the Texas case, on the ground that this court has no power to tax the costs in that case in Texas, as an additional ground.

Mr. Crane: Now let me supplement that just a moment: I want to make this objection to it further; now, Mr. Rosen-

berger is attempting to make binding on us as to the amount of Mecartney's fees in the Cambria litigation the judgment, decision of the Supreme Court of Missouri. That is a unit, one thing: the services in the Cambria case; and in the other cases are allowed in that as a unit. Now he proposes to take out part of that by evidence as to what is reasonable value of those other services and then subtract it and leave the residue as the amount fixed by the Supreme Court. To which we cannot offer any evidence whatever. That is so plain. Now we say that that is objectionable and cannot be done. Either he has got to stand by the judgment itself as an entirety, or else he has got to introduce evidence of what the services are reasonably worth and abandon the judgment.

Mr. Rosenberger: Counsel is in error.

Mr. Smith: Just a minute, Mr. Rosenberger.

Mr. Crane: The record shows it is not only this case that we are talking about, but there are a lot of other things
416 besides that judgment, in that one unit.

Mr. Rosenberger: Well, counsel is mistaken in both statements. The only item of service that could not be attributed by any interpretation to the Cambria suit is this Texas suit, and there is no warrant for the statement that any other services are included in Mr. Mecartney's suit in the State Court, which was affirmed by the Supreme Court of Missouri. In the second place, it is not contended here by us that these gentlemen are precluded from offering proof, if any they have, as to the value of Mr. Mecartney's serivces in that Texas suit.

Mr. Crane: How about the last offer?

Mr. Rosenberger: The last offer is foreclosed, I think, by the decision of the Supreme Court.

Mr. Crane: That is it.

The Master: Well, the Master understands—

Mr. Smith (Interrupting) May I ask a question? Mr. Rosenberger, do I understand you to say the opinion in the Missouri Supreme Court covered only services in the Cambria case and the Texas case?

Mr. Rosenberger: Yes; but my contention is the Cambria case and the Texas case were both included in the same thing.

Mr. Smith: But do I understand you to say that is all that was included in that judgment?

Mr. Rosenberger: Certainly.

Mr. Smith: Well, we object to that, because it is contrary to the fact.

Mr. Rosenberger: Well, it is a statement of fact; can be shown.

The Master: Well, the Master is inclined to sustain this objection. Mr. Rosenberger's position is, he regards the Dock case as part of this entire scheme of litigation by the Cambria Company and the other, Provident Companies, who all went into the reorganization. I understand that this Dock Company did go into the reorganization finally in the reorganization. That is his first proposition. Second is: if the Master should not agree with him about that, then he
417 wishes to show that whatever services were rendered by Mr. Mecartney, or Mr. Histed, as his assistant, or assisting and co-operating with him in the Dock case, were very inconsiderable. Now I think the Master cannot quite occupy those two positions. I have got to take the judgment in the Mecartney case as binding, although the Southern was not a party, and refuse to try the Mecartney case again or else try it all. So I will sustain the objection.

To which last action and ruling of the Master, the Guardian Trust Company, by its counsel, at the time duly excepted, and still excepts.

Mr. Smith: Now just a moment,—

Mr. Rosenberger: (Interrupting) Well, now, I don't want this case to come back to the Master if Judge Van Valkenburgh should disagree with you. I want this proof in the record. The Master is at perfect liberty to decline to consider it after it is in, but I don't want a re-reference here to take this testimony.

The Master: Well, I think it may perhaps be better to let it in and rule it out, for the reason we don't want to come back here.

Mr. Smith: If I may make a suggestion; it is the other way, you rule it out and then let it in.

The Master: Yes, I rule it out and then let it in; but it goes into the record. The Master does not consider it.

Mr. Rosenberger: Before that settlement was made, Mr. Mecartney read a letter to the Guardian Trust Company and recommended a settlement?

Mr. Histed: Well, in point of time that extended from about the 1st of January until the 1st of May.

Mr. Rosenberger: You gave some testimony on this subject in Mr. Mecartney's suit against the Guardian Trust Company for fees, did you not?

Mr. Histed: Well, I don't recall it; if it is on record I expect I did.

418 Mr. Rosenberger: Well, as to the time you put in and as to the nature of the services, I will ask you whether your recollection would be refreshed by reading your testimony at that time, namely, in May, when you were giving that testimony?

Mr. Histed: It undoubtedly would.

Mr. Rosenberger: I read to you this question and answer and will ask you to state whether it refreshes your recollection about it:

"Q. (by Mr. Bush) Some time in 1904, were you employed by the plaintiff in this case to render him assistance, as assistant counsel in what is known as the Channel & Dock cases then pending? If so, I wish you would please state in a general way the time you spent and the services rendered in that matter and explain the nature of the litigation.

A. I was employed by Mr. Mecartney in December, 1904, in that matter. At that time the case was pending in the United States Circuit Court for the Western Division—I forget what the Division is in Texas, but, pending in the Circuit Court in Texas. The case was entitled The Provident Life & Trust Company vs. The Port Arthur Channel & Dock Company. It involved on the one hand, the branch in which I was employed and being a counter-claim, or cross bill against the Guardian Trust Company. At that time issues had been joined upon the controversy and a considerable volume of testimony had been taken. The particular object of my employment was to review the case as it had progressed, to also investigate the further questions of fact and law which may be brought to bear upon the litigation, to assist in the prosecution of the litigation thereafter, in the interest of the Guardian Trust Company. In connection with my employment I, therefore, primarily made a complete analysis of the pleadings and of the testimony, abstracted the testimony. I took a stenographer and made three copies of that, dictating an abstract of the testimony as I went along,

making a digest of it and I would say from the time
419 that I went into the case until it was terminated by a settlement later, I put in at least thirty days."

Does that refresh your recollection about it?

Mr. Histed: I can't remember a bit of that; but think likely that is true.

Mr. Histed: I don't recollect that I ever talked with Mr. Moore, the counsel for the Kansas City Southern Company, regarding the settlement. I may have done so. I knew at the time of my employment of the pendency of this Cambria suit in Kansas City. We made no appearances in Court in connection with the Texas suit other than that we probably entered our appearances of record or perhaps filed a stipulation for continuance or something of that kind.

Mr. Rosenberger: We offer in evidence the original stipulation of settlement which has just been produced by counsel for the Southern Company as Exhibit 1.

The Master: This evidence going to the value and the amount of the services rendered by Mr. Mecartney's assistant in the Dock case is excluded by the Master for the same reasons heretofore stated; but will be put in the record to avoid a re-reference to the Master should the upper court not agree with the Master in his ruling.

To which last action and ruling of the Master, the Guardian Trust Company, by its counsel, at the time duly excepted.

Mr. Smith: Now before you make this offer, Mr. Rosenberger, I want to ask that all of the settlement go in, not just the one document. I want it all to go in.

The Master: The Master excluded it, but it is up to Mr. Rosenberger to put it in.

Mr. Smith: Well, if he doesn't put it in, I will. I suppose when he offers it we can offer it in turn.

The Master: If Mr. Smith is going to offer the rest of it I think it would save time to put it all in at once.

420 Mr. Rosenberger: We also offer in evidence the two documents which accompany that agreement of settlement, both being dated April 4, 1905. May they be marked Exhibits 2 and 3?

The stipulation of settlement above offered in evidence by the Guardian Trust Company, and excluded by the Master, as above stated, is here marked by the Reporter "Gr. Tr. Co. Ex. 1., G. P. 2/1/24"; and the two documents accompanying said agreement of settlement, last above offered in evidence by counsel for Guardian Trust Company, one being a release by the Guardian Trust Company and the other an indemnity bond, are here marked by the Reporter, respectively, Gr. Tr. Co. Ex. 2, G. P., 2/1/24" and "Gr. Tr. Co. Ex. 3, G. P. 2/1/24."

Mr. Rosenberger: Here is the agreement of settlement.

Said agreement of settlement, the same being marked Guardian Trust Company's Exhibit 1, is here read to the Master by Mr. Rosenberger, the same being in words and figures as follows, to-wit:

Guardian Trust Company, Exhibit No. 1.

"Agreement made this 30th day of March, 1905, between the Guardian Trust Company, party of the first part, and Port Arthur Channel & Dock Company, Port Arthur Canal & Dock Company, and The Kansas City Southern Railway Company, parties of the second part, Witnesseth:

That the parties hereto have mutually agreed to compromise and settle certain litigation pending in the Circuit Court of the United States at Beaumont, Texas, as follows:

1. The Guardian Trust Company hereby releases and discharges the Port Arthur Channel & Dock Company on its claim in the sum of approximately Twenty One Thousand Nine Hundred Sixteen and 44/100 Dollars ($21,916.44) and interest thereon which is the subject of an intervention or cross bill filed by the Guardian Trust Company and now pending in the case of Provident Life & Trust Company of Philadelphia against the Port Arthur Channel & Dock Company, et al, in the Circuit Court of the United States for the Eastern District of Texas at Beaumont, Texas; and the Guardian Trust Company further releases and discharges the Port Arthur Canal & Dock Company and The Kan-
421 sas City Southern Railway Company from any and all liability on account of the account above mentioned.

2. The Port Arthur Channel & Dock Company hereby releases and discharges the Guardian Trust Company from any and all liability for an accounting in respect of transactions had between the said Trust Company and the Port Arthur

Channel & Dock Company and acknowledges that the accounts between said companies adjusted by wiping out the balance as provided in the preceding paragraph shall stand and not be further inquired into.

3. The Port Arthur Channel & Dock Company hereby releases and discharges the Guardian Trust Company from all and all liability to it as a subscriber to the capital stock of the Port Arthur Channel & Dock Company. And the Port Arthur Canal & Dock Company as the successor by purchase at foreclosure sale of the property of the Port Arthur Channel & Dock Company and as the owner of the bonds of the Port Arthur Channel & Dock Company hereby joins in such release and acknowledges satisfaction of any claim which it may have against the Guardian Trust Company by reason of the latter's alleged liability as a subscriber to the stock of the Port Arthur Channel & Dock Company.

4. There is pending in the United States Circuit Court at Kansas City, Missouri, a bill for an accounting brought by the Kansas City Suburban Belt Railroad Company and its receivers against the Guardian Trust Company; and a petition in intervention brought by the Kansas City Southern Railway Company against the Guardian Trust Company; and a crossbill filed by the Guardian Trust Company against The Kansas City Southern Railway Company. It is understood and agreed that the proceedings had or to be had in said suit at Kansas City shall be in no manner affected by the settlement or compromise of the matters mentioned in the foregoing paragraphs.

GUARDIAN TRUST
COMPANY,
By H. H. Harris, Prest.

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PORT ARTHUR CANAL
& DOCK COMPANY,
By S. R. Knott, President

PORT ARTHUR CHANNEL
& DOCK COMPANY,
By S. R. Knott, President.

THE KANSAS CITY
SOUTHERN RY.
COMPANY,
By S. R. Knott, President."

Mr. Rosenberger: Accompanying that, as part of the same settlement, is this:

Counsel for Guardian Trust Company here reads to the Master, Guardian Trust Company, Exhibit 2, which is in words and figures as follows:

Guardian Trust Co. Exhibit 2.

"In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

State Trust Company, Complainants,
No. 2331. vs.
Kansas City Pittsburg & Gulf Railroad Company, et al., Defendants.

The Guardian Trust Company hereby indemifies and agrees to save harmless The Kansas City Railway Company from any and all claims whatsoever in the nature of attorney's fees, which claims are made by Trimble & Braley in the interventions of the above entitled cause, filed on March 20, 1900, and set forth on pages 499 to 503, inclusive, in the printed record and on pages 504 to 508, inclusive, of the printed record; such claims hereby indemnified against amounting respectively to the sum of Twenty Seven Hundred and Fifty Dollars ($2750.00) and Thirty Two Hundred and Fifty Dollars ($3250.00) or a total of Six Thousand Dollars ($6,000.00).

GUARDIAN TRUST CO.
By H. S. Mscartney, if Solicitor."

April 4, 1905.

Approved as to form:
J. H. Wood, Asst. Atty.

Guardian Trust Company's Exhibit 3 is in words and figures as follows, to-wit:

Guardian Trust Company's Exhibit 3.

423 "In consideration of the sum of Twelve Hundred and Fifty Dollars ($1250.00) to us in hand paid, the receipt of which is hereby acknowledged, we hereby jointly and severally release and discharge the Port Arthur Channel & Dock Company, the Port Arthur Canal & Dock Company, The Kansas City Southern Railway Company and its associated companies, to the same extent as they were named respectively filed by us in the case of Provident Life & Trust

Company vs. Port Arthur Channel & Dock Company, pending in the Circuit Court of the United States at Beaumont, Texas. No unpaid costs to be taxed against us.

J. McD. TRIMBLE,
By Trimble & Braley

S. B. WILLEY,
By Trimble & Braley,

C. A. BRALEY."

April 4, 1905

Approved as to form:
J. H. Wood, Asst. Atty.

Mr. Histed: With my recollection refreshed by the reading of the stipulation of settlement, dated March 30, 1905, I would not still say that my services extended up to May, 1905. I was only giving tentative dates. I am not very exact about dates. I was not employed at all by the Guardian Trust Company but solely by Mr. Mecartney and for his account. I charged Mr. Mecartney for all of the services rendered in the Texas case, $1,050.00. The work that Mr. Mecartney did was in conjunction and in conference with me. Taking into consideration the nature and merits of the claims of the Guardian Trust Company and the Provident Company, respectively against each other, and the Canal Company, the amount of work we did and the result, $3,500.00 would, in my opinion, be the fair value of all the services rendered by me and Mr. Mecartney in that Texas suit.

On cross examination, by Mr. Smith, Mr. Histed testified, in substance, as follows:

Mr. Smith: It is understood, if the Master please, that by this cross examination we are not waiving our objection to this evidence being incompetent but merely making our cross examination because the evidence has been admitted.

424 The Master: The Master thinks you can cross examine without waiving your objections.

Mr. Smith: Mr. Histed, as a matter of fact, who did the work in that thing as between you and Mr. Mecartney?

Mr. Histed: Well, of course, Mr. Mecartney was the principal counsel on the case, Mr. Smith.

Mr. Smith: Yes; but you did the lion's share of the work, did you not?

Mr. Histed: Well, I did the work of examining the record, getting out the digest of the testimony.

Mr. Smith: You were a thoroughly established and well recognized lawyer at this Bar at the time that was done?

Mr. Histed: Well, I was practicing law here.

Mr. Smith: Didn't he pay you $1,800.00?

Mr. Histed: Well, I had some other matters with him and I think I got all together $1750.00 out of Mecartney.

Mr. Smith: Well, as a matter of fact, Mr. Histed, didn't you do as much in the work, or more in this matter, than he did?

Mr. Histed: Well, the truth is, Mr. Smith, when you get down to it it was more heavy thinking than anything else.

Mr. Smith: Aren't you the one who did the thinking?

Mr. Histed: Well, I don't know about that Mr. Mecartney has a very active mind, I understand; does a great deal.

Mr. Smith: Didn't you prepare the abstract of the evidence?

Mr. Histed: Yes sir.

Mr. Smith: And make an analysis of the pleadings?

Mr. Histed: Yes, sir.

Mr. Smith: And afterwards you made a report to him?

Mr. Histed: Yes, sir.

Mr. Smith: And what you did was either to negotiate with Mr. Moore or he with Mr. Moore on the settlement of the case?

Mr. Histed: That is correct.

425 Mr. Smith: And did you recommend this settlement?

Mr. Histed: Yes.

Mr. Smith: Now that litigation, Mr. Histed, was amicably disposed of, was it not?

Mr. Histed: Yes, sir.

Mr. Smith: There was a complete and final settlement of it?

Mr. Histed: Yes, sir.

Mr. Smith: And a decree was drawn and entered?

Mr. Histed: Yes.

Mr. Smith: Evidencing the disposition of the case?

Mr. Histed: Yes, sir.

Mr. Smith: I will ask you to examine that decree and see if you remember that being the decree?

The Master: The Master is not clear, but you propose on this cross-examination to introduce this yourself?

Mr. Smith: I understand this: that I want to prove by this witness that there was a full and complete settlement of the matter, if he is going to testify on the matter at all.

The Witness: I think that stipulation practically shows that, does it not?

Mr. Smith: I want to show what the purpose of this decree is, if the court please, I want to show either by this witness, or independent of him, this provision in the decree: "It is further ordered, in accordance with the agreement stated in open court that the Guardian Trust Company pay one-half of the costs unpaid, in all the matters hereby dismissed, and that the Port Arthur Channel & Dock Company pay the other half thereof." I want to show that the costs were disposed of in that case by agreement. I offer this decree as part of the cross-examination of this witness.

Said decree last above offered in evidence by counsel for the Kansas City Southern Railway Company is re-
426 ceived in evidence by the Master, the same being marked by the Reporter: "K. C. So. Ry. Co.'s Ex. "A" G. P. 2/1/24".

Said Kansas City Southern Railway Company's Exhibit "A" is in words and figures as follows, to-wit:

Kansas City Southern Railway Company's Exhibit "A"

"In the Circuit Court of the United States for the Eastern District of Texas, at Beaumont.

The Provident Life & Trust Co. of Philadelphia,

vs.

Port Arthur Channel & Dock Company, Guardian Trust Company, and Francis M. Black, Receiver, of Guardian Trust Company, Defendants.

The Barnett & Record Company, Complainant,
vs.
Port Arthur Channel & Dock Company, Defendant.

Equity Nos. 10 and 11 Consolidated.

Wednesday, April 5th, 1905. On this day, in the above numbered and entitled cause, the Provident Life & Trust Company of Philadelphia, by its solicitors, having filed herein a dismissal of its cross-bill and cross-complaint; and the defendant, Port Arthur Channel & Dock Company, having by its solicitors filed a dismissal of its cross-bill and cross-complaint; and the intervener, C. A. Braley having filed a dismissal of his bill of intervention, and the intervener, J. McD. Trimble, having filed herein a dismissal of his bill of intervention; and S. B. Willey having filed herein a dismissal of his bill of intervention; and the Guardian Trust Company, the original defendant, by its solicitors, having filed herein a dismissal of its bill of intervention and cross-bill, and E. L. Martin, E. O. Height, L. Heyneker and O. H. Dean, Trustees of the Port Arthur Townsite Company, having filed herein a dismissal of their bill of intervention as such Trustee, it is ordered by the Court that the cross-bill or cross-complaint of the Provident Life & Trust Company of Philadelphia, filed herein, be, and the same is hereby dismissed; that the cross-bill of the Port Arthur Channel & Dock Company be,
427 and the same is hereby dismissed; that the intervention of C. A. Braley be, and the same is hereby dismissed; that the intervention of J. McD. Trimble filed herein, be, and the same is hereby dismissed; that the intervention of S. B. Willey filed herein, be and the same is hereby dismissed; that the intervention and cross-bill of the Guardian Trust Company, filed herein, be, and the same is hereby dismissed; and that the intervention of E. L. Martin, E. O. Haight, L. Heyneker and O. H. Dean, Trustees of the Port Arthur Townsite Company, be, and the same is hereby dismissed.

It is further ordered, in accordance with the agreement stated in open court that the Guardian Trust Company pay one-half of the costs unpaid, in all the matters hereby dismissed, and that the Port Arthur Channel & Dock Company pay the other half thereof.

This order of dismissal is entered on the stipulation that it shall in no manner affect the merits of companion litigation pending in courts in the State of Missouri between the parties or some of them herein named.

(Signed) D. E. BRYANT, Judge.

(Filed 6th day of April, 1905)."

"United States of America, Fifth Circuit, Eastern District of Texas

I, J. R. Blades, clerk of the District Court for the Eastern District of Texas, do hereby certify the foregoing to be a true and correct copy of the Order of Dismissal in Cause Nos. 10 7 11, on the Equity Docket of said court, entitled:

The Provident Life & Trust Co. of Philadelphia,
vs.
Port Arthur Channel & Dock Co., Guardian Trust Co., and Francis M. Black, Receiver of Guardian Trust Co., Defendants,

The Barnett & Record Co., Complainant,
vs.
Port Arthur Channel & Dock Co., Defendant.

as fully as the same now appears on file and record in my office at Beaumont.

428 To Certify Which, witness my official hand and seal of said (Seal) court at Beaumont, in said District, this the 23rd day of Jan. A. D. 1924.

J. R. BLADES,
Clerk U. S. District Court, E. D. T.
By Susie Kerr, Deput."

Said Exhibit "A" is endorsed on its back as follows: "Eq. No. 10 & 11. United States District Court, Eastern District of Texas. The Provident Life & Trust Co. of Philadelphia vs. Port Arthur Channel & Dock Co. Guardian Trust Co., and Francis M. Black, Receiver of Guardian Trust Co., Defendants. Certified copy of The Barnett & Record Co. Complainant, vs. Port Arthur Channel & Dock Co., Defendant. Order of Dismissal."

Mr. Smith: Mr. Histed, do you remember that there were about four thousand pages of testimony heard or taken in that case?

Mr. Histed: It was a large volume, Mr. Smith, I expect there was.

Mr. Smith: And that had been taken by Trimble & Braley?

Mr. Histed: Yes.

Mr. Rosenberger: Why, do you know it had been taken by them?

Mr. Smith: Why, I don't recall that, but somebody had taken this testimony; I just—

Mr. Smith: (Interrupting) Is there any claim that anybody else had been of counsel in the case between Mr. Mecartney and Trimble & Braley?

Mr. Rosenberger: Why, I don't know. I do know there wasn't four thousand pages of testimony.

Mr. Smith: Well, all I know is Mr. Mecartney's word for it in his petition.

Mr. Rosenberger: Yes, but in his testimony he said he was mistaken about that; said there was about two thousand.

Mr. Smith: There was a good big mass of testimony?

Mr. Histed: Well, I am not undertaking—I suppose the Master understands that—I am not undertaking to count the pages.

429 Mr. Smith: But somebody had spent a [deal] deal of time and effort in taking testimony?

Mr. Histed: Yes, sir, I am talking about the brief interval I was in that.

Mr. Smith: I understand, but there is involved in here the question of somebody's else's work besides Mr. Mecartney's?

Mr. Histed: Yes, sir.

Mr. Smith: And a very large volume of pleadings, files in this case, as many as three hundred?

Mr. Histed: There were a good many names and things like that I didn't charge by memory with.

Mr. Smith: But it meant somebody had done a large amount of work?

Mr. Histed: Yes, sir.

Mr. Smith: Now you know Mr. Mecartney in his suit had claimed his services in this Texas matter were worth $7,500.00, do you not?

Mr. Histed: I don't know, Mr. Smith, what Mr. Mecartney claimed.

Mr. Rosenberger: Claimed how much?

Mr. Smith: $7,500.00.

Mr. Rosenberger: You are mistaken, because he claimed they were worth $5,000.00.

Mr. Smith: I haven't been proven mistaken yet on any of these things.

The Master: What is the question?

The Witness: He wants to know if I know Mecartney claimed $7500.00.

Mr. Smith: I read from the answer of Mr. Mecartney on page 216 of the record—

Mr. Rossenberger: (Interrupting) You mean an answer in testimony?

Mr. Smith: Yes, sir.

Mr. Rosenberger: Well now, you are offering that as original evidence?

Mr. Smith: I am offering this. You are offering this record. You are offering this record, but I want to offer
430 this at the time of the [of the] cross-examination here of this witness. What is the nature of your suggestion?

Mr. Rosenberger: My suggestion is, that so far I have offered only the record proper in that case. You are now offering to read some testimony given by Mr. Mecartney in that suit.

Mr. Smith: Well, I take it that in this matter if the Master is to admit the judgment the record goes with it, whatever is in this record. Now the statement of Mr. Mecartney showed what was involved in the case, I should think that would be proper.

The Master: That the Cambria suit?

Mr. Smith: This is Mecartney's suit against the Guardian Trust Company. I want to read from his answer on page 216 just this part of it.

The Master: Read it.

Mr. Smith: I am reading it: "I can also estimate the features of the litigation which were finished, practically finished, taking the Dock case as a lump sum and did estimate it at the value of $7500.00."

Mr. Rosenberger: That was given at the hearing of his case?

Mr. Smith: Yes; sworn to by him.

The Master: The witness answered the question. Read the question, Miss Parlin, to Mr. Histed.

The following question here read by the Reporter:

Miss Parlin: Now you know Mr. Mecartney in his suit had claimed his services in this Texas matter were worth $7,500.00, do you not?

Mr. Smith: Refreshing your recollection from that testimony would you now attempt to say what the value of his services were in the matter?

Mr. Rosenberger: I don't think his recollection would be refreshed by what Mr. Mecartney testified to in 1911 about it.

The Master: No, I don't think so. The Master doesn't think so. That objection I sustain.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel
431 Company, by their counsel, at the time duly excepted.

Mr. Smith: I just want to put this question: this claim that was made by the Provident Company against the Port Arthur Channel & Dock Company was a claim that was made under the deficiency judgment in the foreclosure case, wasn't it?

Mr. Histed: Yes, sir.

Mr. Smith: I mean the claim that was made by the Provident Company against the Guardian Trust Company on account of the stock subscription was a claim based on the deficiency judgment in favor of the Provident Company in its foreclosure proceeding?

Mr. Histed: Yes.

Mr. Smith: Mr. Mecartney was chief counsel in that Texas litigation?

Mr. Histed: Yes, sir.

Mr. Smith: On your side?

Mr. Histed: Yes, sir.

Mr. Smith: Assuming that he as chief counsel had fixed the value of his services at $7,500.00 would you say that was an unreasonable amount?

Mr. Rosenberger: Wait just a minute: that is objected to as merely argumentative: and, further, because the witness has already expressed his opinion as to the value of the whole service.

The Master: This is cross examination, objection overruled. He says assuming the whole thing was worth $7,500.00 would you consider that unreasonable, was that the question?

Mr. Smith: No, I said assuming Mr. Mecartney put that value on it would you say that was unreasonable, an unreasonable figures to put on those services?

The Master: Objection overruled.

To which last action and ruling of the Master, the Guardian Trust Company, by its counsel, at the time duly excepted.

Mr. Rosenberger: Let me ask you this question first: Would your opinion be altered, Mr. Histed, from your own knowledge of what was done if somebody else had a
432 contrary opinion to yours?

Mr. Histed: I might—it is difficult to answer either question propounded by Mr. Smith or question propounded by Mr. Rosenberger categorically.

The Master: Yes, I think one at a time is enough.

The Witness: But as a lawyer, everybody recognizes the fact that the value of a lawyer's services is largely a matter of judgment; and also recognizes the fact that one would hesitate to criticize a bill another lawyer might have presented, but, as I said in the first place, of course, I figured that taking into consideration, this litigation, the findings and the result accomplished, I had charged $1,000.00, got paid for my services and looking on it as a reasonable fee I figured $3,500.00—$2,500.00 more—would be a reasonable charge for Mr. Mecartney to make.

Mr. Smith: Nevertheless—

Mr. Histed: (Interrupting) But to argue with Mr. Mecartney, or anybody else, on the issue as to whether if he should have charged $7,500.00 he was extravagant or exorbitant, I would hesitate to say so.

Mr. Smith: Well, there was a million and a half dollars involved on one side, wasn't there?

Mr. Histed: On paper, yes.

Mr. Smith: And that was gotten rid of?

Mr. Histed: Yes.

Mr. Smith: And a huge mass of testimony taken and a great many things presented by the pleadings and he had disposed of the litigation?

Mr. Histed: Yes, sir.

Mr. Smith: And—maybe I am putting it improperly—but there is a spread between the opinions of lawyers as to the value of services?

Mr. Histed: Very decidedly in this case, apparently.

Mr. Smith: And you say $3,500.00, but you wouldn't say $7,500.00 in that case was an unusual fee to be rendered by a lawyer?

433 Mr. Histed: If Mr. Mecartney charged $7,500.00 for his services there and got paid I wouldn't undertake to quarrel with him about it.

On redirect examination by Mr. Rosenberger, Mr. Histed testified as follows:

Mr. Rosenberger: I now offer in evidence as Exhibit 4, Mr. Mecartney's bill to the Guardian Trust Company, dated February 19, 1908, addressed to its Executive Committee, the same being Exhibit 38 in the Mecartney record, appearing at pages 453 to 457, inclusive. Here is what is said in regard to the Texas case:

"The Channel & Dock Company, Texas case, was compromised nearly three years ago for less than $30,000.00 and represents a finality as respects benefits received by the Trust Company. The fees easily earned in bringing that complicated $1,500,000.00 claim to an end (my assistants cost me $1,500.00 not included in the above figures) were not less than $5,000.00.; expended as to charge—$5,000.00.

Mr. Histed: In this litigation down in Texas, a receivership was granted upon the original bill of the Barnett & Record Company. In that receivership, the property was administered up to the time it was sold at foreclosure and conveyed to the successor company, the Port Arthur Canal & Dock Company. In that receivership, there was the usual crop of interventions and administrative orders and a great many pleadings estimated by Mr. Smith at around three

hundred. (Mr. Smith: I got it from Mr. Mecartney.) The Guardian Trust Company did not have anything to do with these pleadings made up on interventions of outsiders and other people who had claims against the company. The main pleadings that concerned the Guardian Trust Company were the bill of complaint of the Barnett & Record Company, the answer filed by the Guardian Trust Company thereto and the cross bill filed by the Canal Company and the intervention of the Provident Company asserting a big claim against the Guardian.

S. B. WILLEY, being produced as a witness on behalf of the Guardian Trust Company, first duly sworn, testified
434 on direct examination by Mr. Rosenberger in substance, as follows:

My name is Sidney B. Willey, 3653 Bellview Avenue, Kansas City, Missouri. I first became connected with the Guardian Trust Company about 1894 or 1895. Its name at that time was Missouri, Kansas & Texas Company. I belive it was originally incorporated in 1887 under the name of Real Estate Trust Company, and then by a change of name in 1889 became the Missouri, Kansas & Texas Trust Company, and in 1899, the Guardian Trust Company. It was the same concern all the time, so far as I am aware. My first employment with the company was as auditor. I don't remember how long I continued to be auditor but was afterwards made Secretary and then became Treasurer and then became Assistant Treasurer and member of the directory. I was officially connected with the Guardian Trust Company up to November 30, 1900, when Judge Black was appointed Receiver. At that time I was acting as Auditor and Secretary. When the court appointed Judge Black, receiver, Judge Black sent for me and asked me to go to Chicago and take charge of the property of the company that was then there with a view of undertaking to close out the Chicago office and remove things to Kansas City which was eventually done, and then at his request, I continued with him as a sort of right hand man for him until his death in May, 1902. Then Wash Adams was continued as Receiver of the company until his discharge by the court on October 4, 1902. When the receivership was lifted, it was understood and ordered, in fact, that the company should not continue in new business but should liquidate its affairs and clean up what it had. That liquidation was to be done by the executive committee that had been appointed by the Board of Dirtcors. I was a member of the Executive

Committee. At the annual meeting in October, 1904, I was elected Secretary of the Company and Mr. Harris was elected, President, and Judge Trimble was elected general counsel. At the annual meeting in October, 1905, a faction or group headed by Mr. Prescott succeeded in obtaining
435 control of the company and they elected their Board of Directors and afterwards appointed him to liquidate the affairs of the company. I had continued to be Secretary up to that time but stepped out when Mr. Prescott came in. That ended my official connection with the Guardian Trust Company as a corporation. I recall the application made in April, 1916, by the Shedds and other stockholders of the Guardian Trust Company for a receivership of the company. That resulted in Mr. Henry C. Flower being appointed receiver. Upon his appointment, I was named by him as Assistant to the receiver. I was with him about two years. During the period that I was Auditor and Secretary of the Guardian Trust Company, most of the disbursements made by the company for its corporate purposes, were placed before me for disposition and vouchers were prepared and recorded under my direction and passed over to the Treasurer and to that extent, the funds were disbursed under my direction. During the period of Judge Black's and Wash Adams' receiverships, the same method obtained, that is vouchers were prepared and passed by me and given the Treasurer for payment. When they were discharged as receivers, the executive committee generally passed upon the disbursements of any magnitude brought before them. During the period, October, 1904, to October, 1905, I handled the making up of vouchers, the same as I had done before. They were all passed by me but as I say, if there were matters of any magnitude, they were discussed by the Executive Committee and authorized by the Executive Committee and then vouchers were prepared and recorded in the usual manner. During the period from the appointment of Mr. Flower as receiver, up to the time I left his service, I had supervision of all details connected with the making of disbursements and with the taking of proper vouchers and receipts from the parties to whom disbursements were made. At all the times I was connected with the company or with its receivers, the company had a voucher system by which a voucher was prepared in favor of the party that was to
436 receive the money and the body of the voucher set out what the payment was to cover. Generally the vouchers showed very fully what the payments were made to cover. It was the practice in the regular course of busi-

ness to attach to the voucher, such explanatory papers as would throw light upon the disbursements and they would be filed away with the voucher and be part of it. I filed, at Mr. Rosenberger's request, and under his instructions, the data for the account and demand of the Guardian Trust Company for disbursements of its costs and expenses on file with the Master here.

Mr. Rosenberger: Did you in compiling that account get out of the files of the Guardian Trust Company all of the original vouchers which pertain to the items on that account and which are enumerated therein?

Mr. Smith: We object to this evidence, for the additional reasons in the former objection that it was entirely immaterial, and it does not make any difference how the account was gotten up. The question that is to be determined by the Master is what—that is to be determined by the Master, subject to objections we have made, is what services have been performed that may be charged as costs as between party and party or as between solicitor and client, if any such may be taxed; and it doesn't make any difference about the method of getting up this account; the account cannot be offered in evidence, cannot prove itself.

The Master: The objection will be overruled.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel at the time duly excepted.

Mr. Willey: These voucher numbers are all collected in this statement I prepared here. The vouchers referred to in the statement and produced here before the Master are the original vouchers of the Guardian Trust Company which I got out of the files and from [—] the statement was compiled. In getting out these vouchers entries on the books of
437 the Guardian Trust Company showing that the disbursements shown by the vouchers had actually been made by the Company for the purposes stated in the vouchers and that is where I got the voucher numbers enabling me to find the particular vouchers covering disbursements. I got them off the books of account of the Guardian Trust Company and its various receivers. These books of account were kept in the regular course of business and were the entries made at the time the transactions occurred, as shown by the vouchers, and those vouchers were made up and issued in the regular course of business.

Mr. Rosenberger: I call your attention to abstract of the record in the Supreme Court of Missouri in suit of Harry S. Mecartney, respondent, vs. Guardian Trust Company, appellant the decision of which has been introduced in evidence and particularly the plaintiff's Exhibit No. 1 annexed to Mr. Mecartney's petition in that suit referred to in the first count of that pettition, and also call your attention to the count that is the subject matter here of investigation, and particularly to that feature thereof which enumerates certain items of disbursements by designating them as MeCartney items, and ask you how you compiled the account and the meaning of the expression "Mecartney Item Number", as it appears on the account before this Master?

Mr. Willey: As we have no regular vouchers of the ordinary character for things of that kind, and the only information I could get of them was in this bill of Mr. Mecartney's, I listed them as Mecartney items so as to distinguish them from ordinary Guardian Trust Company vouchers. The Guardian Trust Company was charged with and required to pay and did pay these items designated on the account as the Mecartney items. I was assistant to Mr. Flower, Receiver, at the time the Mecartney judgment was paid.

Mr. Smith: The Kansas City Southern Railway Company and the Cambria Steel Company object to the introduction of any evidence in support of each and all of said Me-
438 cartney items, being items numbered 110, 112, 113, 115, 118, 201, 211, to 245, inclusive, and 251 to 411, inclusive, on the grounds set forth in numbered paragraphs 1 to 10, inclusive, of their written statement of objections. We further object to Item No. 112, covering the amount paid to C. O. Tichenor for these additional reasons:

(1) The services rendered by Mr. Tichenor were rendered not to aid in this litigation but to assist counsel for the Trust Company in retaining the confidence of the Trust Company in himself.

(2) It appears from the opinion of Judge Johnson that only $250.00 was paid Mr. Tichenor. (Mecartney record, page 1435). We further object to any and all evidence in support of item No. 115, covering the amount paid to C. O. Aldrich for the reason that services rendered by Mr. Aldrich were rendered not to aid in this litigation, but to assist counsel for the Trust Company in retaining the confidence of the Trust Company in himself. We further object to any and all evidence in support of Item No. 201, covering a premium

on the appeal bond on the appeal taken by the Trust Company from orders prior to the final decree of June 25, 1910, for the following reasons:

(1) Said appeals were taken by the Trust Company which fact is conclusive evidence that there were reasonable grounds for the contetnions made by the Southern Company on those issues.

(2) Said appeals were improvidently taken by the Trust Company.

(3) The costs of said appeals were taxed by the Court of Appeals and the District Court has no authority to retax the same or to tax other costs in addition to those taxed by the Court of Appeals. In objecting to any evidence in support of Items 278 and 284, we ask that the parties to whom such payments were made be produced for cross-examination.

The foregoing objections were, by the Master, overruled, to which ruling, said parties duly excepted.

Mr. Willey: Voucher No. 1203, covering Item No. 135, was prepared under my direction and was approved by me.

439 Mr. Crane: We object to the recital in the voucher as not proving itself that these services were rendered in the Cambria Steel Company case, because the record already in evidence shows that that is not the fact; shows it was for other services in other cases besides the Cambria Steel Company case.

The Master: The objection is overruled. The voucher was put in evidence some time ago in connection with Mr. Leavens' testimony and is relevant at this time. Still I won't preclude you against objecting at this time; the objection is overruled.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Mr. Smith: I move to strike it out, if it has been admitted in evidence, for the reason stated by Mr. Crane.

The Master: The objection is overruled. The Master does not overrule the objection on the theory that it is binding on the Kansas City Southern or the Cambria Steel Company but it is evidence of the thing and purpose for which the voucher was issued.

Mr. Smith: We contend not properly, because we contend, as shown by Mr. Histed, it included litigation in the Texas case and a good deal of other litigation which has nothing to do with this case.

The Master: The Master has already excluded that case.

Mr. Smith: I know, but this judgment includes the Texas case and several other cases and considerable other service rendered.

The Master: Proceed, Mr. Rosenberger.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Mr. Willey: Judge Trimble was counsel for Judge Black, Receiver, during the period named in Voucher No. 146, covering Item No. 82 of the account. The Cambria bill was
440 filed September 6, 1900. I think the administrative part of the receivership, including a good deal of the legal work, was done by Judge Black himself. He was often in consultations with Judge Trimble. Judge Black would go up to his office and have Judge Trimble down in the office of the Receiver. I was very often called in consultation with them on matters that they were discussing. I was very often called by Judge Trimble to his office regarding the preparation of necessary data in the case and worked together with him on the litigation. From my observation, Judge Trimble was putting in most of the time that he was in the building either in his own office or down in the Receiver's office on the Cambria case. He would call me every little while up there. He didn't take up any matters with me in any case except the Cambria case. I had numerous and constant consultations with Judge Trimble about the company's litigation but only in connection with the Cambria case.

Mr. Rosenberger: Now there is a charge made in this account on this Cambria case of three-fourths of the amount paid to Judge Trimble by way of allowance made by Judge Thayer; I will ask you to state whether it was within your observation that Judge Trimble was giving at least three-fourths of the time he spent as counsel for Judge Black and Wash Adams, receivers, to this Cambria suit?

Mr. Smith: I object to that.

Mr. Willey: I would say, yes.

Mr. Smith: Wait a minute: I object to that question as calling for a conclusion of this witness on a matter he is not qualified to answer; that he cannot tell what was the nature of the service that was rendered, because he is not a lawyer. It is not shown here that he was with Judge Trimble in the performance of all of the work of Judge Trimble's; don't see how he can be qualified to make any estimate.

The Master: The objection will be sustained, I think.
441 We have already had Mr. Braley, he is far more competent to testify about that than this witness.

Mr. Rosenberger: Is the Master ruling that because he thinks some witness is perhaps better qualied than another that, therefore, the other witness cannot testify at all?

The Master: No, the Master is not making such a ruling; but the Master is ruling this witness does not appear to the Master to be qualified on the subject you asked about. I sustain the objection.

Mr. Rosenberger: I just don't want the Master to be misled by the argument of Mr. Smith's. I am not asking this witness as to the value of Judge Trimble's services; that is not the question. I am asking him for the proportion of the time he spent that was within his observation.

The Master: The Master still thinks he will have to sustain the objection, because he don't believe that a layman could qualify to tell, from merely going from office to office and observing the apparent activities of a lawyer; just what he is devoting his time to.

To which last action and ruling of the Master, the Guardian Trust Company, by its counsel, at the time duly excepted.

Mr. Rosenberger: Mr. Willey, did you hear the Master's statement that you are basing your opinion just by going from office to office and, if so, is that a correct statement, that you are basing your opinion just simply by seeing him in his office or his seeing you in your office?

Mr. Willey: No. My opinion is based on the fact that Judge Trimble would call me there and have consultations with me on what he thought was necessary to be required to be done in the Cambria case. And I would prepare statements in various ways and take them up and we would discuss them together. Sometimes he would want those phrased different and I know I spent all of my time and from my ob-

servation—that is all I can make the statement on—I think that he spent pretty near all of his time for months on doing nothing but this Cambria steel case business. I don't
442 see how he could have time to do anything else.

Mr. Smith: I object to that answer and move to strike it out, because it is a conclusion of the witness and an argument, because the witness isn't qualified to determine what the character of the business was that Mr. Trimble was doing.

The Master: Your objection is overruled. I think he has shown himself to be qualified to state what proportion of the time he spent on it.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Mr. Willey: These consultations with Judge Trimble were had every day. I recall that Judge Philips appointed Judge Douglass as Special Master to take the testimony in the Cambria suit about April 1, 1902. My entire time and about every night was devoted to making up an accounting of the items referred to in that suit. That accounting involved a mass of subsidiary companies in addition to the accounts between the Guardian Trust Company and the Kansas City Suburban Belt Railway Company. Among those subsidiary companies was the Kansas City & Independence Air Line, the Consolidated Terminal Railway Company, the Union Terminal Railway Company, the Central Improvement Company, the Fairmount Amusement Company, the Northern Townsite Company, the Kansas City Terminal Construction Company, the Missouri Elevator & Terminal Company. All of these other companies were made defendants to the bill of the Belt receivers. The accounts which I prepared extended, in a general way, from the organization of these railway companies and the Trust Company. The Receivers of the Belt Company and afterwards The Kansas City Southern Company challenged each and every transaction those companies ever had between them. The accounting involved the disposition of all the securities issued by those railroad companies and the various subsidiary companies. These
443 securities had been issued to the extent millions of dollars and had been sold and marketed through the financial agency of the Trust Company at that time called the Missouri, Kansas & Texas Trust Company. The Trust Company in that proceeding was required to account for its disposition of those securities and for what it had done with the

proceeds. It had been the practice for the Trust Company to make disbursements on behalf of these various railroads and their subsidiaries and the transactions were thousands in number. Then too, there were particular items which were the subject of challenge such as the Degoigen matter involving about $89,000.00 which was a complex intricate transaction. It was necessary for me to examine and ransack all those accounts and get out vouchers on them. Virtually all of this work in preparation of these hearings, was done under Judge Trimble's directions. I would take the matters up with him and if something came up I was not clear about, would consult with him. On top of that, Judge Trimble was getting information and data from me as to the state of these accounts so he might prepare his answers and pleadings in the court and also getting information from me as to the history of the various dealings that the Trust Company had had with the reorganized committee which had charge of the reorganization of the Kansas City, Pittsburg & Gulf. All of these matters bore on this Cambria suit. I have a very vivid recollection of the hearings before Judge Douglass which began in January, 1903. I was present at all of them. I prepared, in tabulated form, the entire accounting as between the companies, some forty or fifty volumes of it, and then I was examined upon all of these various tabulated statements, about particular vouchers and cross-examined and re-examined for hours and hours and hours, day after day, and then at night I would prepare additional data to have ready for future hearings which was a matter of days and nights for months and months. Judge Trimble was always present in all of these hearings, conducting examinations. Wash
444 Adams was with him only part of the time after he ceased to be Receiver. I had very many meetings with Mr. Doran who had been auditor of the Kansas City Suburban Belt Railway Company examining the Belt books and in consultation with him. This also was in connection with the Cambria case. My whole time was devoted to this matter during that period. Judge Trimble was present at every one of those hearings, actively in charge of the litigation. He had with him at times, Mr. Eaton, and after Mr. Wash Adams ceased to be Receiver, he appeared at the hearings with Mr. Trimble.

On Monday, Feb. 4, 1924, at 9:30 o'clock A. M., S. B. Willey resuming the stand on behalf of the Guardian Trust Company, further testified in substance, as follows:

Mr. Rosenberger: I call your attention to Item No. 109 on this account reading: "To Wash Adams in settlement of

his bill for services in Cambria case." Did you pay that $6,000.00 in person to Mr. Wash Adams in the form of a check of the Guardian Trust Company?

Mr. Smith: The Kansas City Southern Railway Company and the Cambria Steel Company object to the introduction in evidence of any testimony in support of Item No. 109 on the grounds said property in numbered paragraphs 1 to 10, inclusive, of their written statement of objections and in support of their objections to said evidence, asked that the Trust Company and its Receiver be required to produce the letter of Wash Adams of June 10, 1904, set forth on page 298 of the record in the case of Trimble & Braley vs. Guardian Trust Company, 244 Mo. 244, in which it is shown that the services for which Mr. Adams was paid were not confined to this litigation but that Mr. Adams in requesting the payment of his fee stated the amount of his claim as being $3,000.00 for services in the Cambria case and $3,000.00 in the Texas case.

The foregoing objections were, by the Master, overruled, to which ruling, said parties duly excepted.

445 Mr. Willey: I think the check was signed by Mr. Charles Hastings at that time Treasurer. Whether I took it over to Mr. Adams office or not at the time, I don't remember. I negotiated a settlement with Wash Adams which resulted in this payment of $6,000.00, having been requested by the Executive Committee to visit Adams and see what I could do with him regarding a compromise of the claim which he had put in for a considerably larger sum. I talked with him and reported back to the Committee what Mr. Adams and I had agreed upon and the committee authorized the payment of the amount to Mr. Adams. My recollection is that Mr. Adams' claim was to cover both the Texas case and the Cambria case, and in my negotiations with him, there was nothing said as between the two cases. It was simply a matter of compromise, settlement in full for the amount that he claimed. I don't know what his services were in the Texas case. I do know that he was very attentive upon the hearings in the Cambria case. It is my recollection that Mr. Adams at all times after his discharge as Receiver in October, 1902, and up to the time that Mr. Mecartney was employed, was working with Judge Trimble on the Cambria case.

Mr. Rosenberger: Now, I want to inquire of you in reference to charges made in Items 180 and 181 relating to your own time and services that you were putting in on the Cam-

bria case and to the time and services that were put in by Miss Jennie L. Gott, stenographer.

Mr. Smith: The Kansas City Southern Railway Company Cambria Steel Company object to any and all evidence in support of Items 180 and 181 on the grounds set forth in numbered paragraphs 1 to 5, inclusive, and 7 of their written statement of objections, and on the further ground that it appears that those items cover the salaries of officials and employees of the Trust Company and its Receiver and they may not be properly charged or taxed as costs in any event even if costs as between solicitor and client may be taxed, in this case.

The foregoing objections were, by the Master, overruled, to which ruling, said parties duly excepted.

446 Mr. Willey: Jennie L. Gott was a young lady who had been in the employ of the Guardian Trust Company for a long time and with the Missouri, Kansas & Texas Trust Company, its predecessor, as a stenographer in the office. After I was called upon to make these tabulated statements showing the various transactions between the different companies relating to the Cambria suit, I would prepare them in pencil the night before and give them to her to tabulate and to get in shape to place before the attorneys in the hearings before the Master on the succeeding days. She devoted her entire time to preparing those statements and had no opportunity to do anything else. More than one-half of my time during the period from Dec. 1, 1900 to June 1, 1901, was devoted to the preparation of the data relating to the Cambria suit. I did the work of an expert accountant but I was not paid any amount that would cover any such thing as that. That is to say, I was paid the salary specified in Item No. 180, but as a matter of fact, was rendering services worth a great deal more than that. From June 1, 1901 to December 1, 1904, my time was entirely devoted to examining the records and books and preparing tabulations therefrom for use of the Receiver and counsel of the Trust Company at the hearings before the Special Master and in assisting the Trust Company and its receivers in said suit in attendance upon such hearings as an expert witness. The statements contained in Item No. 181 of the account relating to the services of Miss Gott are correct statements of fact. She worked down there under my direction and observation.

Mr. Rosenberger: In compiling this statement of account here that is the subject matter of injury on what basis did

you prepare that statement with reference to the items of charge therein so far as the nature of the disbursement is concerned and the case to which it was applicable?

447 Mr. Smith: I object to this question on the ground that it is imposing upon the witness the duty and the power to determine the issue that is for the Master to determine in this case, that is, what items are to be charged and what are not, if any of them are to be charged; calling for the conclusion and opinion of the witness. It submits to Mr. Willey the power to give his conclusions as to what he thought constituted the proper items to be entered.

The Master: Of course, the inclusion of what Mr. Willey's theory of making this account, wouldn't be binding at all upon you, but he is an expert accountant and I think he may testify as to how he made up his account, from what documents and from what sources and how he arrived at it and whether the vouchers were examined and whether he took vouchers that showed on their face what they had been expended for, and so forth.

Mr. Crane: I want to make the further objection that it is wholly unnecessary and does not prove anything. He has made up his account and the vouchers and items are here. Such ones as he wants to introduce evidence about, he can introduce. Such items as we want to attack, we can do so. It doesn't make any difference about the theory; they show on their face what they are, the vouchers and book accounts. Now what possible good can be accomplished or what proof, I don't see. The accounts are here and the vouchers are here.

The Master: Of course, he didn't put in this account all the vouchers or all the items that the books showed, only those as an expert accountant he deemed applicable. I don't think it has very great weight.

Mr. Rosenberger: I am not asking what he deemed applicable. I am asking him if he put in what the books showed were applicable.

Mr. Smith: Isn't that the same thing? Isn't he passing on the books?

The Master: Read the question, please.

448 (The last question propounded here read).

The Master: The objection will be overruled.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Mr. Willey: The vouchers which apply to the case in question were gotten out and entered by me on this account. Items which appeared to me to be foreign to the Cambria case, I did not include in any of the items in this account.

Mr. Rosenberger: Going back to the Item No. 134, being the item of $15,000.00 paid to Fred W. Lehmann by order of the United States District Court made November 24, 1917, you may state whether that disbursement was made by you on behalf of the Receiver, Flower, upon presentation of an order by the Court requiring its payment.

Mr. Smith. We object to the introduction of any evidence in support of Item No. 134 on the grounds set forth in numbered paragraphs 1 to 10, inclusive, of our written statement of objections, and in addition thereto, we want to clearly present to the Master that we are objecting to any effort to tax the costs in this court for services rendered in some other court, that other court being the only one which has any right to tax any such costs.

The foregoing objections were, by the Master, overruled, to which ruling the Kansas City Southern Railway Company and the Cambria Steel Company duly excepted.

Mr. Willey: Yes, the $15,000.00 payment to Mr. Lehmann was made by me on behalf of the Receiver upon presentation of an order by the Court requiring its payment.

449 Q. Where you present testifying as a witness for a long or short period of time?

A. Why, I once said I was three hundred and sixty-five days on the stand, except four hours, and I don't (didn't) get very far away from it. I think the record shows the number of days, hearings we had before the Master. The Master was not always there, however. (p. 413).

On cross-examination by Mr. Smith, Mr. Willey testified as follows:

Q. Mr. Willey, in giving your evidence here did you state you were a witness for three hundred and sixty-five days, less four hours?

A. Well, that was a joke, of course—

Q. How long were you actually a witness?

A. Well, the record shows the time I appeared before the hearings.

Q. I am asking you for your recollection about it.

A. I can't remember that, Mr. Smith.

Q. You are not able to state that?

A. Not definitely, no.

Q. As a matter of fact, you only testified on twenty-three different days under Mr. Trimble's administration of the case, did you not?

A. I should think more than that—

Q. And then during Mr. Mecartney's administration you testified seven more days?

A. That I wouldn't say. The record would have to speak for itself— (pp. 430, 431.)

Mr. Smith: When you testified a few moments ago Mr. Adams didn't begin attending the hearings until after
450 his discharge as receiver, the fact of the matter is the hearings didn't begin until the third of January, 1903, did they?

Mr. Willie: Well then, he began to attend them when they began.

Mr. Smith: In the meantime or during all the time that this litigation was on hand there was much work for Trimble & Braley and for Judge Black in the Bierce case, was there not?

Mr. Willey: There was much work?

Mr. Smith: Much work, yes?

Mr. Willey: Why, I should imagine there was, yes.

Mr. Smith: It took a good deal of time, did it not?

Mr. Willey: I should think so, yes.

Mr. Smith: And that continued all during the time you were connected with the Guardian Trust Company, did it not?

Mr. Willey: Yes, sir.

Mr. Smith: Didn't you perform services in the Bierce case too?

Mr. Willey: I prepared these statements.

Mr. Smith: I am speaking of the Bierce case now?

Mr. Willey: I supposed the Bierce and Cambria cases were all one.

Mr. Smith: Oh, then in speaking of the time Judge Trimble was giving to the Cambria case your answer was on the basis that the Cambria case and the Bierce case were all one piece of litigation?

Mr. Willey: I understood they were, yes.

Mr. Smith: And your answers are based on that assumption?

Mr. Willey: Yes.

Mr. Smith: At this same time and during this period there were certain foreclosure suits that were brought by the Provident Company against the Belt Company and its constituent companies, were there not?

Mr. Willey: Well, I presume so. I don't remember exactly about those.

Mr. Smith: Well, you know there were foreclosures of the Belt mortgages and Terminal mortgages and Consolidated Terminal?

451 Mr. Willey: Yes, sir.

Mr. Smith: And several suits growing out of that or on account of those foreclosures, several foreclosure cases?

Mr. Willey: So I understand.

Mr. Smith: And those were matters that took time and attention also of Trimble & Braley?

Mr. Willey: That I could not say. I wasn't connected with the companies that brought the foreclosure suits against them directly.

Mr. Smith: Well, you were observing the business that Mr. Trimble was doing and the amount of time that he was giving to this litigation and I am asking you if you know about such cases?

Mr. Willey: I don't know what time he gave to those cases. I wasn't connected with them.

Mr. Smith: Those were suits brought by the Provident Life & Trust Company to foreclose the mortgages of those companies and I am asking you—

Mr. Willey: (Interrupting) Whom did they bring suits against?

Mr. Smith: They brought them against companies who had given the mortgages.

Mr. Willey: I wasn't connected with those companies.

Mr. Smith: Wasn't the Trust Company interested in those suits and wasn't Mr. Trimble working on them, Trimble & Braley?

Mr. Willey: I presume they were working on the bonds.

Mr. Smith: Weren't Mr. Trimble and Mr. Braley giving some time and attention to those cases?

Mr. Willey: I could not say. I don't know.

Mr. Smith: You wouldn't say Trimble & Braley were not devoting some of their time to that litigation?

Mr. Willey: I haven't said they were not. I don't know.

Mr. Smith: At the same time and during this period of time, the Guardian Trust Company was foreclosing a
452 mortgage against the Kansas City, Shreveport & Gulf Railway Company too, was it not?

Mr. Willey: There was some litigation of some character that was up.

Mr. Smith: That was being handled by Trimble & Braley, was it not?

Mr. Willey: I presume so, I don't know. I could not tell you about that.

Mr. Smith: They had also brought foreclosure proceedings against the Texarkana & Fort Smith Company for the Guardian Trust Company?

Mr. Willey: That may be. I could not tell you definitely about that.

Mr. Smith: And you know that they were also engaged in prosecuting and defending litigation with reference to the Port Arthur Channel & Dock Company properties?

Mr. Willey: I tell you I had nothing to do with that case. I don't know who was defending it or what arrangements were about it at all.

Mr. Smith: You had filed an intervening petition in that case for your services?

Mr. Willey: My services.

Mr. Smith: Didn't you?

Mr. Willey: I don't think so.

Mr. Smith: You signed a release for the amount that was sued for in your intervening petition, didn't you?

Mr. Willey: Well, I wouldn't remember; possibly it was so, but I don't remember.

453 (On direct examination Mr. Willey had testified as follows: Q. Now, during that period last inquired about I will ask you if you recall, in fact, whether you will ever forget, your experience during the taking of testimony before Judge Douglass, which began in January 1903? A. I have a very vivid recollection of such hearings. I was present at all. p. 413.)

Mr. Smith: That was not indelibly stamped upon your memory as part of this transaction; now you have stated—I am skipping around improperly in this examination, but it is done in an effort to try to speed on. You have stated here that Jennie L. Gott was engaged as stenographer and she spent her time copying these reports that you made to be used as evidence?

Mr. Willey: Yes.

454 Mr. Smith: And you say that all of her time for three or four years was devoted to that?

Mr. Willey: I do.

Mr. Smith: Every day?

Mr. Willey: Whatever that period is that is covered there.

Mr. Smith: And you say this young woman as stenographer was engaged for several years in doing nothing but copying statements you were getting up?

Mr. Rosenberger: I object to that, for the reason the exact period was stated to the witness.

Mr. Smith: This exact period, Mr. Rosenberger, I can't carry it in my mind.

The Master: Forty-eight months; six months half time and forty-two months full time; isn't that right?

Mr. Smith: I haven't that statement with me.

Mr. Rosenberger: Just for a minute: It is full time from June 1, 1901 to December 1, 1904.

Mr. Smith: That was the question I asked you when I was interrupted; I said several years.

Mr. Smith: She didn't do anything else except copy your statements?

Mr. Willey: Not that I know of.

Mr. Smith: Your statements were offered in evidence in the case, weren't they?

Mr. Willey: Yes, sir.

Mr. Smith: The ones that she copied?

Mr. Willey: Yes, sir.

Mr. Smith: You are serious in that answer? You are not joking when you tell about the time she was devoting, every day from June 1st—

Mr. Willey: (Interrupting) All the time I was preparing this evidence, she was putting in her entire time.

Mr. Smith: Now just a moment, I want to get those figures again. I don't want to be mistaken: I will ask you
455 again if your statement is that from December 1, 1900 to June 1, 1901, she was devoting at least one-half of her time to the copying of your tabulations?

Mr. Willey: Yes.

Mr. Smith: And from June 1, 1901 to December 1, 1904, she was devoting all of her time to that service?

Mr. Willey: I don't know anything else she was doing.

Mr. Smith: I am asking you now if you are testifying she did do that thing?

Mr. Willey: Yes.

Mr. Smith: You are positive about that, are you?

Mr. Willey: Yes, sir.

Mr. Smith: Where is Jennie L. Gott?

Mr. Willey: I can't tell you. I haven't the slightest idea.

Mr. Smith: When did you last hear from her?

Mr. Willey. [Of], four, five, six years ago.

Mr. Smith: Was she living here in Kansas City at that time?

Mr. Willey: Yes, sir; she and two or three sisters.

Mr. Smith: You don't know of her having left here or departed this life?

Mr. Willey: Haven't the slightest idea.

Mr. Smith: How many hours a day did she work, what were her office hours?

Mr. Willey: Well, she was down there from about eight thirty to four thirty; sometimes as late as five o'clock.

Mr. Smith: Now this work you did: did you have any assistants; that is, any men to assist you in doing your work?

Mr. Willey: Nobody.

Mr. Smith: None of these men that were working for Judge Black were doing anything of that kind?

Mr. Willey: No, sir.

Mr. Smith: It took your undivided attention then when you were doing that work?

Mr. Willey: Yes.

456 Mr. Smith: And the statements that she was copying were statements that you wrote out?

Mr. Willey: Yes, sir.

Mr. Smith: So that the writing of these statements kept you very fully occupied during that period of time?

Mr. Willey: Yes, sir.

Mr. Smith: You were spending—

Mr. Willey: (Interrupting) Not writing statements, but compiling them; getting information, data, to make them up.

Mr. Smith: During the time that you were getting this evidence, most of the time you were getting this material you were testifying as a witness for Mr. Hagerman, were you not?

Mr. Willey: I have always understood that I was subpoenaed as a witness by Mr. Hagerman.

Mr. Smith: And it was he that was asking for these various statements after you began your evidence?

Mr. Willey: Yes, sir.

Mr. Smith: Were those statements that you were consulting with Mr. Trimble about so constantly?

Mr. Willey: The examination and re-examination brought out these statements.

Mr. Smith: And you were consulting with Mr. Trimble about making up these statements as requested by Mr. Hagerman?

Mr. Willey: When there was questions came up I wanted some decision on, yes.

Mr. Smith: Now: In getting out these vouchers you have spoken of did you get out each of the vouchers, showing payment in some of these claims?

Mr. Willey: Yes, sir.

457 By Mr. Smith:

Q. Outside of the Mecartney items and outside of the salary items all of these vouchers are vouchers that are issued under bills rendered or to settle some claim made by somebody in the business, are they not?

A. I should say so.

Q. They pertain to payments on account of past transactions?

A. I should say so.

Mr. Rosenberger: There are some that apply to judgments rendered against the Trust Company, aren't there?

Mr. Smith: Aren't they past transactions, Mr. Willey?

Mr. Willey: I suppose judgments on something that happened in the past; wouldn't happen on the day that the judgment was rendered, I don't consider.

Mr. Willey: Mr. Lloyd referred to in voucher No. 3249 covering Item No. 428, was one of the directors of the Guardian Trust Company in New York. I was not connected with the Trust Company at the time this voucher was
458 made up. Mr. Prescott was then in charge and in possession, and the voucher was not prepared by me.

Mr. Smith: Item 84, Mr. Willey, is to J. McD. Trimble, $500.00; I will get you to state what does the voucher show it was for?

Mr. Willey: Salary as a general attorney for the month of November, 1902.

Mr. Smith: Is there anything on that voucher that shows what service was rendered?

Mr. Willey: No, sir; salary as general counsel.

Mr. Smith: Mr. Rosenberger, may we have an understanding that vouchers covering items 83 to 107 are similar to that?

Mr. Rosenberger: Yes, sir; absolutely.

The Master: All those items from 83 to what?

Mr. Smith: 83 to 107, inclusive.

Mr. Smith: Mr. Willey, this Item 108 says: "H. S. Mecartney payment on account $5,000.00", what does the voucher show services were rendered for?

Mr. Willey: Services in Kansas City Suburban Belt Suit and other litigation of the Trust Company.

Mr. Smith: And other litigation of the Trust Company; you don't know what that other litigation was, of course?

Mr. Willey: No, I do not.

Mr. Smith: This voucher 960 is accompanied by letter of Mr. Mecartney's, is it not, attached to it?

Mr. Willey: Yes, sir.

Mr. Smith: I want to offer from this letter attached to the voucher this statement—

The Master: (Interrupting) You are offering the whole letter?

Mr. Smith: No, sir; just this statement in the letter, don't want to encumber the record with anything more:

"My prophesies as to an earlier ending of the account-
459 ing case have not come true. However, the Texas case was gotten out of the way much earlier than I anticipated and in a very profitable manner."

The date of that letter being September 18, 1905.

Mr. Smith: Mr. Willey, this Degoijen transaction that Mr. Rosenberger asked you about, he spoke of as being a very intricate transaction. Did not the Degoijen transaction consist of certain false entries on the books of the Trust Company and the Belt Company for the purpose of declaring a false dividend by the Belt Company, for the purpose of giving a false market value to the stock of Belt Company for the benefit of the Trust Company and Mr. Degoijen.

Mr. Rosenberger: That is objected to as an effort to retry the case of Cambria Steel Company, vs. The Kansas City Southern.

Mr. Smith: I am offering to prove these facts by this witness: In 1897 the Belt Company had a large floating indebtedness and was insolvent. In order to bolster up the market for the sale of Belt securities, Mr. Degoijen and Mr. Stilwell had the Belt Company get rid of its debts and declare a dividend. This was arranged by the Trust Company and Mr. Degoijen presenting the Belt Company with some cash and too Mr. Degoijen presented the Belt Company with some securities and then bought some of them back, promising to pay for same at an agreed price. They also arranged that certain notes, aggregating $89,333.33, with some other notes, all owned by the Belt Company, should be taken off of the Belt Company's books as liabilities and be assumed on the Trust Company's books as liabilities of the Trust Company; this being shown on the books of the two companies. A dividend was declared by the Belt Company and paid by the Trust Company and charged to the account of the Belt Company. The Trust Company as a Belt stockholder received part of this dividend. A financial statement was published, showing the Belt Company to be solvent, the notes above referred to not being included in its liabilities.

The statement further showed a surplus from earn-
460 ings and a dividend declared therefrom. In 1899—

The Master: (Interrupting) Pardon me: that is already in that form?

Mr. Smith: I am offering this as part of the testimony of this witness: It is stated in the offer but in a different form. In 1899, after the Gulf Company had gone into the hands of a receiver and when it was anticipated the Trust Company would lose its control over the affairs and over the management of the Belt Company the Trust Company restored said notes as debts of the Belt Company and discharged itself from all liability on account of them; but no consideration was shown for this release by the Trust Company of two companies.

Mr. Crane: If you will allow us to show those facts they will be shown.

Mr. Rosenberger: The offer is objected to, because it is an attempt to reopen the Cambria Steel Company case, so called, being litigation decided by the United States Circuit

Court of Appeals and affirmed by the United States Supreme Court.

The Master: Well, that is the first ground of your offer, as I understand?

Mr. Smith: Yes.

The Master: The Master sustains the objection on the first ground.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

The Master: Now on the second ground, you contend the testimony will be relevant to the Wilcox item of this account?

Mr. Smith: Yes, sir.

The Master: The Master will sustain the objection on both grounds but will permit, at the proper time, the Kansas City Southern Railway Company or the Cambria Steel Company to produce any evidence going to the propriety of this charge of Wilcox as an item of disbursements, to which ruling of the Master, the Kansas City Southern Com-
461 pany and the Cambria Steel Company duly excepted.

Mr. Smith: Mr. Willey, isn't it a fact that you, yourself, were of the opinion that this Degoijen item of $89,333.00 would have to be allowed in favor of the Belt Company?

Mr. Rosenberger: That is objected to for the same reasons.

The Master: The objection is sustained.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Mr. Smith: I want to offer to prove by this witness that he, as an expert, as auditor of the Trust Company, was of the opinion that this Degoijen item of $89,333.00 ought to be allowed as a credit.

Mr. Rosenberger: I object to that offer for the same reasons.

The Master: The objection is sustained, on the ground you are trying to open something previously adjudicated by the courts to whom this Master is, properly, compelled to bow.

To which last ruling and action of the Master in sustaining the objection to the offer of proof, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

On redirect examination by Mr. Rosenberger, Mr. Willey testified in substance, as follows:

Mr. Rosenberger: And you have testified here also to the amount of time you were giving and Miss Gott was giving in the Cambria suit and that Judge Trimble was giving to the Cambria suit; when you testified what was the time they were giving to the Cambria case you testified that was the time they were giving to that suit and the Bierce suit combined?

Mr. Willey: It was the Cambria suit.

462 Mr. Willey: In explanation: these things happened so long ago I got confused in thinking the Bierce case was the starting of the Cambria case. I remember now that the Bierce case was a case for the appointment of a receiver for the Guardian Trust Company; that the Cambria case was another thing in itself. But, as I say, things happened so long ago that it appeared to me at that time as though the Cambria case was simply a continuation of the Bierce case, change of title, or something of the kind. But I remember distinctly now that the Bierce case was a case for the appointment of a receiver for the Guardian Trust Company, that took place before Judge Thayer in St. Louis and that there was no time put in by me on the Bierce case, excepting attendance with attorneys before the court in St. Louis and preparing some data for Mr. Chadbourne and Judge Trimble and St. Louis attorneys who were presenting a defense against the application for the receiver.

Mr. Rosenberger: So far as the Bierce case was concerned, that was purely a matter of business liquidation under the receivership of Judge Black and Wash Adams?

Mr. Willey: Yes, sir.

Mr. Rosenberger: Mr. Willey, referring to Mr. Mecartney's employment, to refresh your recollection, I will ask you if you can recall being present at a meeting of the executive committee of the Guardian Trust Company, held on the fourth of November, 1904, and of the following occurring as recited in its minutes:

"Mr. Mecartney, an attorney from Chicago, who accompanied Mr. Shedd to Kansas City at his request, was upon the suggestion of Mr. Shedd, invited to attend the meeting. Mr. Mecartney was here introduced to the members of the Committee, and in general conversation the matter of our litigation with the Kansas City Suburban Belt Railway Company was taken up. Mr. Mecartney stated that he thought he could review the case sufficiently to be able in about two weeks to advise the Committee as to what, 463 in his opinion might be the result of the litigation, and advise as to what action should be taken and also determine as to whether he could take charge of the matter if it was so desired by the Committee.

"Whereupon, on motion of Mr. Bradbury, it was voted, that Mr. Harry S. Mecartney, attorney, be employed by this committee to look into the claims of the Guardian Trust Company versus the Kansas City Suburban Belt Railroad Company with the view of furnishing this committee with his legal opinion in writing as to the amount we can reasonably expect eventually to recover providing no compromise be had."

You recall that occurring?

Mr. Willey: Yes, sir.

Mr. Rosenberger: Then do you recall at the next meeting of the executive committee, held on December 7, 1904, of the following occurring:

"Mr. Mecartney was invited to present his proposition as to employment by this company as counsel in the cases of this Company versus the Kansas City Suburban Belt Railroad and Port Arthur Channel & Dock Company.

"Mr. Mecartney presented his opinion as to the cases in printed form and verbally in a general way his ideas as to the action that should be taken in the matter in question, and offered the following proposition as to employment as counsel."

Here follows a proposition, saying, among other things: "I think that $5,000.00 would be an appropriate and moderate retainer"; do you recall that happening?

Mr. Willey: Yes, sir.

Mr. Rosenberger: And at the same meeting, the following occurred:

"Mr. Mecartney presented his bill for services and expenses in his review of the cases as submitted in his printed record, including a reasonable number of such printed reports, services $2000.00, expenses $277.71. Mr. Me-
464 cartney having withdrawn from the meeting, his proposition as to employment as counsel in the litigation in question and his bill for services and expenses in review of the cases as submitted in his printed report, was the subject of general discussion, and after quite an extended time so devoted to the matter, Mr. Mecartney was again invited to present himself and after discussing the matter with the Committee and making explanations in answer to some questions by various members of the Committee, he stated that in consideration of the proposal to employ him as counsel to carry on the litigation, he would amend his bill for services in the review and report upon the matters in question to read $1500.00 in place of $2000.00, so resulting in said bill for services and expenses being a total sum of $1777.51 instead of $2277.51.

"Whereupon on motion duly made, it was voted that the sum of $1777.51 be paid by Mr. Mecartney in full for such services and expenses.

"On motion duly made, it was voted that the proposition as presented by Mr. Mecartney as to employment as counsel, to carry on and take charge of the litigation of this company against the Kansas City Suburban Belt Railroad Company and the Port Arthur Channel & Dock Company, be accepted, and that he be and is hereby employed as such counsel; and that the sum of $5000.00 be advanced him to apply as retainer on account of expenses in such litigation."

Did that occur?

Mr. Willey: Yes, sir,

Mr. Rosenberger: And was Mr. Mecartney paid a fee of $1500.00 for making a preliminary report on the claims in the Texas case and in this Cambria suit?

Mr. Willey: That is my recollection.

Mr. Rosenberger: We offer in evidence, a stipulation dated February 4, 1905, in Cambria Steel Company v.
465 Guardian Trust Company, et al, reading as follows:

Guardian Trust Company's Exhibit No. 4.

Stipulation

"In the Circuit Court of the United States Within and for the Western Division of the Western District of Missouri.

Cambria Steel Company, Complainant,
No. 2468. vs.
Guardian Trust Company, et al, Defendants.

Receivers of the Kansas City Suburban Belt Railroad Company, Cross-Complainants,
vs.
Guardian Trust Company, et al, Cross-Complainants.

It is agreed by the parties to the above entitled cause that either party to this cause may use as evidence in this cause, all or any part of the testimony heretofore taken at Kansas City, and at Philadelphia, in the cause of Provident Life & Trust Company, Complainant, v. Port Arthur Channel & Dock Company, Defendant, consolidated with the cause of the Barnett & Record Company, Complainant, v. Port Arthur Channel & Dock Company, Defendant, now pending in the Circuit Court of the United States for the Eastern District of Texas. The use of said testimony, however, shall be subject to the right of any party to this cause to object to the same for incompetency, irrelevancy or immateriality, except that in the depositions taken at Philadelphia the copy of the record and minutes of the reorganization committee shall not be objected to because it is a copy, but the Guardian Trust Company shall have the right, if it so desire, to compare such copy with the original; and if such comparison is made and any mistakes in the copy are found, such mistakes shall be corrected. Each party to this cause shall have a right to further examine or cross-examine any witness whose
466 testimony is so used, provided that any cross-examination that may be had of the witnesses so testifying at Kansas City, if the testimony of such witness be offered by the Guardian Trust Co., shall be deemed a part of the defendant's case, and the time consumed therein shall not be deducted from the time allowed the complainant within which to take its testimony.

(Signed) H. S. MECARTNEY,
J. C. ROSENBERGER,
Solicitors for Guardian Trust Company.

Feby. 4th, 1905.

S. W. MOORE,
THOMAS R. MARKS,
Solicitor for the Kansas City Suburban Belt Railroad Company and Its Receivers.

Mr. Rosenberger: I offer as Exhibit 5, the following portion of the stipulation made and entered into between the Guardian Trust Company, of the one part, and Kansas City Southern Railway Company, Kansas City Suburban Belt Railroad Company and E. F. Swinney, its receiver, of the other part, by and through their respective solicitors, dated June 30, 1906, as follows:

(Reading)

Caption of the stipulation being entitled: "In the Cambria Case."

"Stipulation

"It Is Hereby Stipulated, by and between the parties in the above entitled cause, as follows:

I.

(Not offered, as not material)

II.

(Not offered, as not material).

III.

"Any party to this cause shall have the right upon the trial of this case to refer to any part of the record in the four consolidated causes of Provident Life & Trust Company vs. Kansas City Suburban Belt Railroad Company, et al., number 2464, 2465, 2466, 2467, filed September 6, 1900, in the Circuit Court of the United States for the Western Division of the Western District of Missouri; or in the case of
467 Trust Company vs. Kansas City, Pittsburg & Gulf Railroad Company, filed in the same court on or about April 28, 1899."

Mr. Rosenberger: The purpose of the offer is to show that the record in the Provident Life & Trust Company, the four cases and the Cambria suit, are all one and the same record and are made so by stipulation. Mr. Smith is in error in supposing that any testimony was taken in the foreclosure suits. There was not. Our contention is, and it is so found by the Court of Appeals and by the United States Supreme Court,

that the Cambria bill and the foreclosure bills are all part and parcel of the same litigation; and here is the stipulation that shows the parties to the cause so treated it.

Mr. Smith, on behalf of the Kansas City Southern Railway Company and the Cambria Steel Company, thereupon objected to the introduction of the foregoing documents in evidence on the ground that it was an attempt to go into matters which the Master had ruled he had no authority to consider.

The Master: The way it occurs to the Master, is, the question of whether they are all part of the one litigation is inextricably involved in the good faith proposition, because as I remember the contention—I read it hastily—that is part of the finding. The Cambria Company was sort of a stool-pigeon, the whole thing was part of the scheme, as they put it, to despoil the Trust Company. That is what the court holds. Now if the stipulations which were entered into by the parties are to the effect that all testimony in these others could be used in the Cambria case, which would tend to demonstrate the whole litigation was one, that, it would seem to me, would involve the good faith proposition. I can't see how you can distinguish it.

The Master thereupon sustained the objections to the introduction of the foregoing stipulation and exhibit, to which ruling, the Guardian Trust Company and its receiver, duly excepted.

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468 J. C. ROSENBERGER.

J. C. Rosenberger, being duly sworn as a witness on behalf of the Guardian Trust Company, testified in substance, as follows:

My name is J. C. Rosenberger. I am 50 years old. I am a lawyer and have been since 1895. From the year 1897 up to the date of the death of Judge Francis M. Black, in May, 1902, I was associated with Judge Black in his office. I had that association with him the entire time Judge Black was the receiver for the Guardian Trust Company, namely, from November 30, 1900 down to and including some date in May, 1902, when he died. With his death, my knowledge and observation of what was being done in the Cambria litigation ceased until about the month of December, 1904, when I was employed by Mr. Mecartney to assist him in the prosecution

and defense of the Cambria Steel Company litigation, to which the Guardian Trust Company was a party. Mr. Mecartney had been employed by the Trust Company on Dec. 7, 1904, to take charge of its interests in the so-called Cambria Steel Company litigation pending here in Kansas City, and in the Texas case, known as the Port Arthur Channel & Dock Company case. Prior to that appointment, Mr. Mecartney had been employed to investigate the claims of the Guardian Trust Company and those against it in those litigations and had made his report in December, 1904. From the time I got into the case in the middle of December, 1904, until March 27, 1908, I was actively engaged in representing the Guardian Trust Company, as assistant to Mr. Mecartney. On March 27, 1908, Mr. Mecartney was discharged from the Guardian Trust Company and from the other services in connection with those litigations and retired from the case, and with him, I retired.

Throughout the time that I was counsel in the case under Mr. Mecartney, I made expenditures out of my own funds and periodically rendered statements of account to Mr. Mecartney showing my disbursements, and from time to time, Mr. Mecartney paid the amount of my bills. All the bills that I rendered to Mr. Mecartney are set out in statements
469 A to M, inclusive, annexed as exhibits to Mr. Mecartney's statement of account, which, in turn, are annexed to his petition filed in Mecartney v. Guardian Trust Company, in the Circuit Court of Jackson County, Missouri, and which has heretofore been introduced in evidence. Every dollar that is shown to have been paid out on the statements of account rendered by me to Mr. Mecartney, being said exhibits A to M, inclusive, were paid out solely and exclusively in this Cambria Steel Company litigation and were necessarily incurred in the proper representation of the Guardian Trust Company in that litigation. I say that not because any of that expense is open to inquiry here because all those items were adjudicated against the Guardian Trust Company in the Mecartney suit, but for the purpose of making it clear that those items were expended in the Cambria case and not in the Texas litigation or in any other litigation except that dealt with and disposed of by the opinion of the Circuit Court of Appeals in the Cambria case.

The statement and charge in the account here, with respect to Item No. 33, stenographer's fee paid to Brown, Barnett & Adams, is correct; that is to say, those stenographer services were rendered in the Cambria suit before the Special Master.

With respect [ot] Items 34 and 35, being certain items paid to Miss Utter, Clerk of the United States Court for certified copies, those copies were obtained by me for use in this Cambria suit and were paid for as stated in the charge and were offered in evidence, or referred to in the hearings before the Special Master Douglass.

Mr. Smith: We object to any and all evidence in support of Items 33, 34 and 35, on the grounds set forth in numbered paragraphs 1 to 7, inclusive, of our written statement of objections. I further object to Mr. Rosenberger's statement that the copies were offered in evidence, or referred to as indefinite and I think that Mr. Rosenberger ought to amend his statement by stating whether or not they were of-
470 ered in evidence.

Mr. Rosenberger: I will state that the obtaining of those certified copies was absolutely necessary to enable counsel properly to protect the interests of the Guardian Trust Company in that litigation.

The foregoing objections of the Kansas City Southern Railway Company and the Cambria Steel Company to the introduction of the testimony in question were by the Master overruled, to which ruling, said parties duly excepted.

Item No. 36 was a docket fee paid to the Clerk of the State Court in this County in an action at law brought by the Guardian Trust Company against the Kansas City Southern Railway Company to recover an indebtedness due the Guardian Trust Company from the Kansas City, Pittsburg and Gulf Railway Company, being the same debt in litigation in the Cambria Steel Company case.

Mr. Smith: We object to the introduction of any testimony in support of Item No. 36 on the grounds set forth in numbered paragraphs 1 to 7, inclusive, of our written statement of objections, and for the following additional reasons:

(1) The costs covered by said item were incurred by the Trust Company in suits in which it was seeking affirmative relief against the Kansas City Southern Railway Company, and further, such costs are not taxable in this case.

(2) Said suits have been dismissed at the cost of the Guardian Trust Company and judgment rendered against it for said costs, from which judgment no appeal has been taken.

The foregoing objections were by the Master overruled, to which ruling the Kansas City Southern Railway Company and the Cambria Steel Company duly excepted.

Mr. Rosenberger: The same is true with respect to Items No. 37 and 39 in the account. Item No. 40 was for a
471 certified copy of the bill of complaint in a certain suit filed by the Kansas City Southern Railway Company against its reorganization committee, and that was obtained by me for use as evidence before the Master in the Cambria suit.

Mr. Smith: The Kansas City Southern Railway Company and the Cambria Steel Company object to the introduction of the foregoing evidence in support of Items 37, 39 and 40 on the grounds set forth in paragraphs 1 to 7, inclusive, of their written statements of objections.

Said objections were by the Master overruled, to which ruling said parties duly excepted.

Mr. Rosenberger: Items 41 to 43, inclusive, were expenditures made by me in person in connection with an appeal from an order of injunction described in those items of charge.

Mr. Smith: We object to the introduction of this testimony in support of items 41 to 43, inclusive, on the grounds set forth in numbered paragraphs 1 to 7, inclusive, of our written statement of objections and on the following additional grounds:

(1) So much of such items as were properly taxable as costs have been duly taxed by the judgments of the Court of Appeals and they have been paid by the Southern Company.

(2) Judgment was rendered by the Circuit Court in favor of the Southern Company in said injunction suits and, therefore, there is no ground for contending that they were instituted or prosecuted in bad faith and without reasonable grounds.

(3) The suits in the State court and the appeal from orders of injunction enjoining their prosecution were improvidently instituted and prosecuted, the position taken by the Trust Company in reference to said suits and appeals being directly contrary to the position eventually taken by it on the appeals from the final decree of June 25, 1910, in

the Court of Appeals and the United States Supreme
472 Court.

Items No. 41 and 43 are costs that are taxed for making up a record and for printing the record in the Appeal from the first injunction suit. Those costs have been taxed in that case and have been paid to the Southern Company, with an attorney's fee added thereto taxed by the Court of Appeals and hence cannot be taxed in this case.

The foregoing objections were, by the Master, overruled, to which ruling, the Cambria Steel Company and the Kansas City Southern Railway Company duly excepted.

Mr. Rosenberger: Items 79 and 80 represent certain refunds to the Guardian Trust Company by the Clerk of the United States Circuit Court of Appeals on account of costs adjudged against the Kansas City Southern Railway Company in an injunction appeal, the total amount refunded being $986.76.

Item No. 44 was for a certified copy of the final judgment in a certain suit in which the First National Bank of Kansas City was the plaintiff and the Guardian Trust Company was the defendant, in which the bank had obtained a considerable judgment against the Trust Company on account of a promissory note executed by Suburban Belt Railway Company as maker and endorsed by the Guardian Trust Company. The Belt Company being insolvent, the bank sued the Trust Company as endorser, and recovered final judgment. The copy of that judgment was obtained in order that I, as counsel for the Trust Company, might file a supplemental claim against the Belt Company and the Kansas City Southern Railway Company, to recover from the Southern Company the amount that the Trust Company had paid out on that judgment, and this was done. That certified copy of the judgment was offered in evidence before Special Master Douglass and was allowed by him as a just claim against the Suburban Belt Railway Company and was afterwards allowed by the United States Circuit Court of Appeals as a just claim against the Kansas City Southern Railway Company.

Item No. 45 was for a certified copy of an order which
473 was used on hearings before Special Master Douglass.

Item No. 46 was an amount paid to a Notary by the name of Linton for notarial services in taking the deposition of B. B. Cone of Detroit, Michigan. I took that deposition

and made arrangements with Mr. Linton and paid out that money. That deposition was used in evidence in the Cambria case.

Item No. 47 was an item of the same nature, the costs of depositions taken in New York City by Jennie T. Powers, of Herman Sielscken and others. Those depositions were offered in evidence in the Cambria suit before Judge Douglass and were considered by him.

As to Items 48 and 49, the facts are as treated in the charge.

Item No. 50 was a Notary fee paid to Miles F. Powers in connection with the taking of the depositions already mentioned.

Items 51 and 52 are for certified copies which were used in evidence before Special Master Douglass in the Cambria suit. The Special Master's report referred to in item No. 51 was a report on some subsidiary question that had arisen in some hearing before the Master. It was not the final report because the final report was not made until 1910.

Item No. 53 was an amount paid out for copy of the opinion as stated in the Item to J. D. Jordan, Clerk of the United States Circuit Court of appeals upon the depositions of the first injunction suit sued out by the Southern Company and was for the necessary information of counsel in the representation of the Guardian Trust Company in connection with their appeal.

Mr. Smith: We object to all of the foregoing testimony in support of Items 44, 45, 46, 47, 48, 49, 50, 51, 52 and 53 on the grounds set forth in numbered paragraphs 1 to 7, inclusive, of our written statement of objections. We further object to Mr. Rosenberger's statement that the copy referred to in Item 45 was used on hearings before Special Master Douglass because it might have been used for
474 evidence and without some showing in that regard, it is objectionable. We object to any evidence on Item 47, for the reason that the item on its face, says it is for certified copies of depositions rather than for the original depositions to be used in evidence. We object to the evidence on Items 51 and 52 because those items show on their face that they were for copies of documents without showing what they were or why the copies were used instead of the originals. We object to the testimony on Item 53 on the ground that is does not appear that the copy there re-

ferred to was used in evidence. It is not competent if not offered in evidence and if it was offered in evidence, it was not competent as between party and party.

The foregoing objections were, by the Master, overruled, to which ruling the Kansas City Southern Railway Company and the Cambria Steel Company duly excepted.

Item No. 54 covers a docket fee in the State Court in another suit by the Guardian Trust Company against the Southern Railway Company on an indebtedness due the Trust Company from the Kansas City, Pittsburg & Gulf Railway Company.

Mr. Smith: We object to the testimony in support of Item No. 54 on the grounds set forth in numbered paragraphs 1 to 7, inclusive, of our written statement of objections and on the following additional grounds.

(1) The costs covered in said item were incurred by the Trust Company in suits in which it was seeking affirmative relief against the Kansas City Southern Railway Company and, therefore, such costs were not taxable in this case.

(2) The case in which said costs were incurred was dismissed at the cost of the Guardian Trust Company and judgment was rendered against it for said costs from which judgment no appeal has been taken.

The foregoing objections were, by the Master, overruled,
to which ruling the Kansas City Southern Railway
475 Company and the Cambria Steel Company duly excepted.

Mr. Rosenberger: The facts as to the disbursement covered in Item No. 55 are correctly stated in the charge. The facts as to Item 56 are correctly stated in that item of the charge and the copy of the report of that foreclousre was, according to my recollection, introduced in evidence before Special Master Douglass. The facts as recited in Item 57 are correct.

A copy of the record referred to in Item 58 was obtained for the purpose of resisting an injunction suit sued out in the Cambria case by supplemental bill filed by Swinney, as Receiver of the Kansas City, Suburban Belt Railway Company, restraining the Guardian Trust Company from further prosecuting certain actions at law in the State Court, which actions were brought by the Guardian Trust Company to collect an indebtedness that was being litigated in the

Federal Court, an injunction which was afterwards granted and reversed by the Court of Appeals.

Item No. 59 was for the copy of the bill of complaint referred to in that item. It was necessary to obtain that copy because the Southern Company had, without notice to the Guardian Trust Company, obtained a restraining order against the Guardian Trust Company to restrain it from prosecuting said court suits and we had to get a copy of the bill of complaint and counsel had to get a copy from the Clerk to be advised of the charges and allegations that the Kansas City Southern were making.

Item No. 60 was an amount paid to Brown, Adams & Brown, court reporters, whom I had employed to take down and transcribe the arguments made at the hearings before Judge McPherson on the application for a temporary injunction by the Kansas City Southern Railway Company to restrain the Guardian Trust Company from further prosecuting said court suits which I have already, in general, described. Those hearings were had in the library in Mr. Moore's office on or about January 29, 1908.

476 Item 61 is the balance that was paid them for the same services.

Item 62 correctly states the facts, so far as they go, and the copies referred to were used in connection with the appeal that was taken by the Guardian Trust Company from the injunction order made by Judge McPherson in this Cambria suit.

Items 63 to 67, inclusive, were for certain orders entered by the Court on application for the same in the Cambria suit which were used on the hearings before judge Philips and upon which was predicated an application made to the court, judge Philips sitting, for an order applied for by the Guardian Trust Company to require the Kansas City Southern Railway Company and the Belt receivers to give additional injunction bonds. It appears on the day the Cambria bill was filed, September 6, 1900, the Court made an order ex parte and without notice to the Trust Company, enjoining the Trust Company from realizing on collateral security which the Trust Company held to secure the indebtedness due to it from the Belt Company, that collateral consisting of the stock of various subsidiary companies and certain bonds which had been pledged with the Trust Company by the Belt Railroad. That injunction was granted on the injunction bond of only $10,000.00. The application made in

the spring of 1908 was the application founded upon the fact that the companies whose stock had been pledged as collateral, as aforesaid, were actually having their property depleted by sales and conveyances and was constantly diminishing in value, making the $10,000.00 injunction bond utterly inadequate and making the collateral security inadequate. The purpose of the application was to require the giving of an additional bond. All this is stated in explanation of why it became necessary to obtain the copies of the orders which are enumerated in these items of charge.

477 The last thing I did while I was connected with the case under Mr. Mecartney was to docket in the United States Court of Appeals an appeal from the order of injunction which had been granted by Judge McPherson in the Cambria suit to restrain the prosecution in the State Court suits. I think that appeal or filing order got to the Clerk on the very day when Mr. Mecartney was discharged, March 27, 1908, and within a few days afterwards, the Clerk at St. Louis requested a deposit of $1070.00 for preparing and printing the record in that case. I turned the request over to counsel who had succeeded us and the voucher here, No. 2311, covering Item No. 68, shows that that amount was paid.

Mr. Smith: We object to the foregoing testimony in support of Items 55 to 68, inclusive, on the grounds set forth in numbered paragraphs 1 to 7, inclusive, of our written statement of objections. We object especially as to Items 68 covering costs of appeal from injunction orders prior to final decree for the following additional reasons:

(1) So much of said item as was properly taxable as costs has been duly taxed by the judgment of the court of appeals and paid by the Southern Company.

(2) Judgment was rendered by the Circuit Court in favor of the Southern Company in said injunction suit and, therefore, there is no ground for contending that the suit was instituted or prosecuted in bad faith and without reasonable grounds.

(3) The suit in the State Court and the appeal from the order of injunction enjoining its prosecution, were improvidently instituted and prosecuted, the position taken by the Trust Company with reference to said suit and appeal being directly contrary to the position eventually taken by it on the appeals from the final decree of June 25, 1910 in the Court of Appeals in the United States Supreme Court.

The foregoing objections were by the Master overruled, to which ruling, the Kansas City Southern Railway Company and the Cambria Steel Company duly excepted.

478 On Tuesday, February 5, 1924, at 9:30 o'clock A. M. hearings before the Master were [reumed], and Mr. Rosenberger resumed the stand on behalf of the Guardian Trust Company and further testified in substance, as follows:

During my association with Judge Black and during the period of his receivership of the Guardian Trust Company and while in his office, the activities of Judge Trimble in connection with this litigaton, were under my observation. I won't say all of them were but I would be present and see Judge Trimble conferring with Judge Black most extensively in connection with the Cambria litigation. At that time I had no direct connection with the litigation. Judge Black talked with me about issues that were involved and had me look up some authorities for him. It was in that connection I would talk to Judge Trimble about it. There were weeks when Judge Trimble and Judge Black would be in almost daily conferences about the policies to be pursued and the legal questions involved in this accounting suit, the Cambria case. I was called in to these conferences and I very well recall the amount of time and care and attention that was given by both Judge Black and Judge Trimble to the preparation of the pleadings of the Guardian Trust Company in the case. I especially recall an answer that was filed in the Provident Case by the Guardian Trust Company and about which there was a very acute controversy in court before Judge Thayer. I know a vast amount of time was taken in the preparation of that answer. The solicitors for the Provident Company, headed by Mr. Hagerman, filed exceptions to that answer and those exceptions came on for hearing. Judge Trimble was present and represented the Trust Company. The exceptions were sustained by Judge Thayer but upon the express condition that a stipulation should be entered into by the Southern Company that the decree of foreclosure in the Provident case should not bar or prejudice or in any wise affect the rights of the Guardian Trust Company in respect to its in-
479 debtedness referred to in that answer and being the same indebtedness involved in this Cambria case.

The charge made by Item 82 is for three-fourths of the allowance which was made by Judge Thayer to Trimble & Braley for their services to the receiver. Based on my own personal observation while in Judge Black's office and in association with him and with Judge Trimble, my judgment is

that three-fourths of Judge Trimble's time is a very conservative estimate as to the amount of time he was putting in on this Cambria suit.

Mr. Smith: I object to that statement because it is a matter of impossibility that Mr. Rosenberger should know the amount of time that Mr. Trimble was devoting to that litigation. We further object to the testimony on all of the grounds heretofore urged against the introduction of voucher No. 146, covering Item No. 82, and make the same offer of proof in support thereof made in support of objections to Voucher 146.

The foregoing objections were by the Master overruled, and said offer of proof denied, to which rulings, the Kansas City Southern Railway Company and the Cambria Steel Company duly excepted.

Mr. Rosenberger: I personally incurred the bill covered by Item No. 110 and made that disbursement to Mr. Amram, an attorney at Philadelphia. In the course of my representation of the Guardian Trust Company, it became necessary for me to ascertain what demands had been made by the Kansas City Southern Railway Company in a certain bill of complaint which it had filed in Philadelphia against its reorganization committee. In order to obtain that information, I requested Mr. Amram to obtain for me a certified copy of the court records in that suit and paid him for his services in doing that.

Item 112 covers a certain fee paid C. O. Tichenor, with the consent of Mr. Mecartney. I requested Mr. Tichenor
480 to review the [the] questions of law in the Cambria litigation insofar as they touched the liability of the Kansas City Southern Railway Company for the floating indebtedness of the Kansas City Suburban Belt Railway Company in this Cambria case and he prepared in his usual lucid and terse manner, an opinion which was of an enormous aid to us. I have no recollection as to the amount paid to Mr. Tichenor but I do know that that was involved in the litigation between Mr. Mecartney and the Guardian Trust Company. I get the amount of the item from the petition in Mr. Mecartney's suit and the judgment in that suit awarding it against the Trust Company.

Item No. 113 is for a fee paid to Sullivan & Cromwell, New York City. I incurred that expense and it was exclusively in the Cambria case. They assisted me in taking some depositions there in New York.

Item No. 115 is a fee paid to C. H. Aldrich, then a lawyer of Chicago, for a written opinion. I did not incur that expense and had nothing to do with the disbursement, but I did see the opinion and it related exclusively to the Cambria debt.

Item No. 118 is for a fee paid to James C. Jones, of St. Louis, for consultation and advice in the Cambria suit. I incurred this indebtedness with Mr. Mecartney's permission. We were both present at the consultation with Mr. Jones. Both of us went to St. Louis to see him and the consultation related solely to this Cambria case.

Mr. Smith: We object to all of the foregoing testimony in support of Items 110, 112, 113, 115 and 118, on the grounds set forth in numbered paragraphs 1 to 7, inclusive, and 9 and 10 of our written statement of objections. We object further to testimony in support of Item 112, being the amount paid to C. O. Tichenor for the following reasons:

(1) The services rendered by Mr. Tichenor were rendered not to aid in this litigation but to assist counsel
481 for the Trust Company in retaining the confidence of the Trust Company in himself.

(2) It appears from the opinion of Judge Johnson that only $250.00 was paid Mr. Tichenor (Mecartney record, page 1435).

We object to the testimony in support of Item 115 covering the amount paid to Mr. Aldrich on the same additional grounds made to the introduction of testimony in support of Item 112.

The foregoing objections were by the Master overruled, to which ruling the Kansas City Southern Railway Company and the Cambria Steel Company duly excepted.

Mr. Rosenberger: At the time of Mr. Mecartney's discharge on March 27, 1908, the firm of Gates & English were immediately employed to succeed him and they remained in charge of the litigation until Judge Van Valkenburgh appointed Henry C. Flower, Receiver of the Guardian Trust Company, in August, 1916, and upon that appointment of receiver being made, Mr. Flower engaged me to take charge of the Trust Company's interest in the Cambria case, my employment being in connection with that of Mr. Justin D. Bowersock who was also attorney for Mr. Flower, as Receiver, and I have had charge ever since. I know of my own knowledge, the history of the litigation and from neces-

sary knowledge acquired as counsel in the case succeeding Gates & English, know what their services were, and the nature of them, where they appeared and what they did. It is all shown as a matter of record. Aside from what the record shows, I have no knowledge. I have some personal knowledge as to Items 124 and 126 being total fees of $2500.00 charged by Mr. Haff. While Mr. Haff was preparing the brief on appeal, he conferred with me about it obtaining from me the benefit of such general information as I had from my former connection with the case. I know that he prepared a brief and my recollection is that it was a separate brief signed by himself alone and not joined in by Gates & English.

482 Item No. 134 covers a fee of $15,000.00 paid to Fred W. Lehmann. I personally negotiated with Mr. Lehmann for a settlement of his claim for fees. After the Court, in August, 1916, appointed Mr. Flower, Receiver, Mr. Lehmann visited Kansas City to take up with Mr. Flower, as Receiver, the question of a settlement of the balance due him for very valuable services rendered by him in the United States Supreme Court. We met at luncheon at the Muehlbach Hotel and discussed the matter. The up-shot of the conference was that he indicated the amount that he thought he ought to have and I agreed to recommend to Mr. Flower that he be allowed by the Court in the Guardian Trust Company receivership case, a fee of $15,000.00 in full of all claims for services in the Cambria suit. An application was made to the Court for instructions by Mr. Flower as to what he should do and upon a hearing before Judge Van Valkenburgh, he authorized the Receiver to pay the sum of $15,000.00 to Mr. Lehmann and it was paid to him under that order of court.

I come now to Item No. 135 covering the amount paid in satisfaction of the final judgment rendered against the Guardian Trust Company in the suit brought against the Trust Company in the State Court, affirmed in 274 Mo. 224. The only features of that suit and judgment on which I am going to give any testimony is as to the extent of my knowledge of the services rendered by Mr. Mecartney in the so-called Texas case, also called the Port Arthur Channel & Dock Company case referred to in Mr. Mecartney's petition in that suit, and my opinion as to the value of those services.

Mr. Crane: Then we want to make the objection that, inasmuch as the Master has heretofore ruled that he would not retry the Mecartney case, meaning thereby the case reported in 274 Mo. 224, he cannot, and should not, try a portion of it

and hear evidence as to the reasonable value of a portion of the services included in that judgment without hearing also evidence as to the reasonable value of the remaining portion of the services also involved. In other words, the same objection that was made at the time the same testimony was sought to be elicited from Mr. Clifford Histed.

The Master: The Master sustains the objection; but, in order that if the Federal Court—subject to whose rulings the Master is—disagree with him it might not send the case back for re-reference the testimony excluded may be stated for the purpose of being put in the record.

To which last action and ruling of the Master, the Guardian Trust Company, by its counsel, at the time duly excepted, and still excepts.

Mr. Rosenberger: Immediately upon my employment in December, 1904, by Mr. Mecartney, I proceeded to make myself familiar with the issues involved in the Cambria litigation so far as would enable me to proceed with the case, particularly to proceed with the evidence before the Special Master Judge Douglass. Among other things I did in that connection was to examine the pleadings and evidence taken in the Port Arthur Channel & Dock Company case. In that case, the litigation had commenced by filing, on September 10, 1900, a creditor's bill in the Federal Court in Texas by a concern named The Barnett & Record Company. That was four days after the filing of this Cambria bill in Kansas City. Upon that bill, a receiver had been appointed for the Port Arthur Channel & Dock Company, the theory of that Barnett bill, as in the Cambria bill, was, and it was alleged, that the Guardian Trust Company and its officers dominated and controlled the corporate policies of the Port Arthur & Channel & Dock Company and thereby had been enabled to despoil the Dock Company of its money and property. At the time the bill was filed, the Dock Company was indebted to the Trust Company in the sum of about $21,000.00 and upon that bill, the Guardian Trust Company filed, in due season, an answer in the nature of a cross bill, seeking to recover from the Dock Company, the amount of that indebtedness. About the same time the Barnett & Record suit was filed or on the same day, the Provident Life & Trust Company, as Trustee in the corporate mortgage of the Dock Company, filed a bill to foreclose that mortgage just as was done here in Kansas City by the same company in the suits against the Belt Railroad and its constituent com-

panies. That Texas foreclosure suit ripened into a decree of foreclosure and the property was conveyed to a successor company known as the Port Arthur Canal & Dock Company. The suit resulted in a deficiency decree being rendered in favor of the Provident Company, as Trustee for the bond holders for which it was acting. Thereupon the Provident Company filed a cross bill in the Barnett & Record suit asserting a demand against the Guardian Trust Company of about one and one-half millions of dollars, predicated on the alleged fact that the Trust Company had subscribed for the capital stock of the Texas Company, the Dock Company, and had failed to pay its subscription. The situation at the time that Mr. Mecartney and I got into the case in 1904 was that the Trust Company had filed a demurrer to the bill of the Provident Company and that demurrer had been overruled by Judge Bryant. Some testimony had been taken in the case, less than two thousand pages of it. None of that testimony had been taken either by Mr. Mecartney or myself. Mr. Mecartney employed Mr. Clifford Histed to assist him in that Texas litigation. Primarily he was to look into the case and give his opinion upon it. Before Mr. Mecartney's employment, in fact, before his formal retainer in either the Texas case or the Cambria case, Mr. Mecartney had looked into that Texas case, as well as the Cambria case, having been employed so to do by the Executive Committee of the Trust Company, and had given the Executive Committee of the Trust Company, a report on the case. As I recall it, he had not as yet seen the evidence in the case. The entire period of time during which any services whatever were rendered by Mr. Mecartney in that Texas case and comprehended within Item 136, was from the time of his retainer on
485 Dec. 7, 1904 until the Texas case was settled, on March 30, 1905, and during that time nothing was done except to so far look into it as to see what ought to be done with it. Mr. Mecartney conferred with me about it. He got a report on the case from Mr. Histed. He gave me a copy of that report. Both of us were of the opinion that the Guardian Trust Company was entitled to recover its $21,000.00 and the Provident Company was not entitled to recover the million and a half dollars. There was nothing done in that Texas case except to look into it and settle it and that was done. No proceedings in Court whatever, no hearings before Masters. In my judgment, $3500.00 would be a liberal fee for what was done in that Texas case. Aside from services rendered in the Texas case by Mr. Mecartney and myself during the period from December, 1904 to March 27, 1908, all of the services rendered were in the Cambria case unless it

be the Texas litigation may be considered as part of the Cambria suit.

Mr. Smith: We object to all of the foregoing testimony in support of Items 124, 126, 134, 135 and 136, on the grounds set forth in numbered paragraphs 1 to 10, inclusive, of our written statement of objections, and as to Items 135 and 136, we urge in addition, the specific objections made to the introduction of vouchers 1203 and 3371 heretofore introduced in evidence in support of Items 135 and 136, respectively, and make the same offer of proof in support of said objections as was made in support of said vouchers.

The foregoing objections were by the Master overruled, and said offer of proof denied, to which rulings, the Kansas City Southern Railway Company and the Cambria Steel Company duly excepted.

Mr. Rosenberger: Items 138 to 165 are grouped under the column headed "Cash paid for printing briefs, etc." Some of these briefs and other documents were printed at my own personal request, that is, I ordered them printed. Some of them were printed in Chicago at the instance of Mr.
486 Mecartney, but whether printed at his instance or at mine, those briefs are the briefs in the Cambria case and in no other litigation. Items 166 to 179, inclusive, under the same heading, are for briefs printed after March 27, 1908, the date of Mr. Mecartney's and my discharge from the case. As to these, the vouchers will speak for themselves. I can say, however, that I have actually seen the briefs and they are as described in those items and I had them in my office. All those briefs were briefs on appeal in this Cambria suit. They were part of the records turned over to me so I could discharge my duties as counsel in the case and those briefs were used in the Cambria case.

Items No. 180 to 199, inclusive, cover payments to expert accountants named in those items who were employed directly by me, I incurred that expense and the work they did was exclusively in the Cambria case.

Mr. Smith: We object to the foregoing testimony in support of Items 138 to 199, inclusive, on the grounds set forth in numbered paragraphs 1 to 8, inclusive, of our written statement of objections. In objecting to Items 182 and 183, covering $500.00 paid to Frank B. Wilcox, we ask that such party be produced for cross-examination. In support of our objections to the testimony in support of items 182 and 183, we ask leave to introduce evidence to establish the facts

thus stated by Mr. Mecartney on page 646 of the record in his case in the State Court:

"Mr. Rosenberger telephoned me on Sunday at my home in Hinsdale that Mr. Wilcox, whom the other side had called, was on the stand, and by making a search of the records could work out that whole Degoijen item as an expert accountant, and Mr. Rosenberger wanted authority to make a contract with him and pay him $450.00 therefor. The draft came in the next day, or the day after, for $446.66, with a letter that he had contracted wih Mr. Wilcox; that Wilcox had thought that ½ of 1% of the Degoijen item was
487 reasonable, and that he had made that contract; and I sent back a letter directing that that would not do; that I didn't believe in making a contract on that basis, but if Mr. Wilcox should make it a round figure of $450.00, and that was the contract (page 646 of Mecartney record).

The foregoing objections were by the Master overruled, and said offer of proof was denied, to which ruling the Kansas City Southern Railway Company and the Cambria Steel Company duly excepted.

Mr. Rosenberger: Items 200 to 202, inclusive, refer to premiums on certain appeal bonds.

Mr. Smith: We object to any testimony in support of Items 200 to 202, inclusive, on the grounds set forth in numbered paragraphs 1 to 7, of our written statement of objections and for the following additional reasons:

(1) Said items cover premiums on appeal bonds on appeals taken by the Trust Company, which fact is conclusive evidence that there were reasonable grounds for the contentions made by the Southern Company on those issues.

(2) Said appeals were improvidently taken by the Trust Company.

(3) The costs of said appeals were taxed by the Court of Appeals and the District Court has no authority to retax the the same or to tax other costs in addition to those taxed by the Court of Appeals.

Said objections were by the Master overruled, to which rulings, the Kansas City Southern Railway Company and the Cambria Steel Company excepted.

Mr. Rosenberger: I applied for the appeal bonds referred to in Items 200 to 202, inclusive, and the bonds were given and in connection with the proceedings in the Cambria case. The first item, No. 200, was for an appeal bond on the first injunction that was granted in 1905 by Judge Philips. That injunction was granted and a supplemental bill filed by the Kansas City Southern Railway Company in the Provident case to enjoin the prosecution of the Trust
488 Company's state court suits. Items No. 201 to 202 were premiums on appeal bonds in the second injunction, being the one granted in 1908 by Judge McPherson, on a supplemental bill filed in the Cambria case for the same purpose, namely enjoining the state court suits.

Items 211 to 246, inclusive, were for stenographic services incurred by me in connection with my representation of the Guardian Trust Company in the Cambria case and in no other litigation. I recall I was employing R. J. Holmden, John M. Orr, R. C. Pierson, Miss Parlin and other stenographers at that time, to help me in the necessary work of representing the Guardian Trust Company. I have no knowledge of information of Item No. 247 beyond what the voucher shows on its face. I do know, however, that Miss Rawson was present in court, and it is my understanding she was employed by E. C. Wright for some reason to take down the arguments of the attorneys on that occasion.

Items 248 and 249 cover some stenographic services rendered in the United States Circuit Court of Appeals in May and June, 1911. I was not present there at that time but I have seen the transcript of the proceedings taken down by Mr. Levin, the stenographer, in fact, I have a transcript of it here. It appears in the record in the Shedd case and was used in evidence in that case. The proceedings reported were on oral arguments in the United States Circuit Court of Appeals at St. Paul, at the argument of the appeal and also at the argument of the petition filed by certain stockholders of the Trust Company, represented by Mr. Mecartney for leave to intervene in the Court of Appeals, but I claim no personal knowledge or participation in the matter.

Many of the items numbered 251 to 411, inclusive, grouped under the headings of "Miscellaneous Incidental Expenses" were personally incurred and paid by me and charged to and collected from Mr. Mecartney and are shown on my bills annexed to his statement of account which is Exhibit 1
489 to his petition in his suit against the Guardian Trust Company already referred to. All of these expenses

were incurred in the Cambria Steel Company litigation. By that I mean the accounting suit and cross suit by the Trust Company to recover its debt from the Kansas City Southern Railway Company and from the Belt Company. Among these items there appear certain items of Mr. Mecartney's for expenses of trips to Kansas City. I have looked up my files and correspondence in connection with these items and my memory, as refreshed by these files and correspondence, is that Mr. Mecartney was in Kansas City on those dates on business and touching the prosecution of these Cambria suits and the defense by the Trust Company of the claims that were being asserted against it by the Southern Company, either in its own name or the name of others. His home was in Chicago and it was necessary for him to be in Kansas City frequently in connection with that business, both to conduct proceedings in court, necessary consultations with me and for appearances before the Special Master. Some of those visits were quite protracted. I recall particularly at the time of the oral arguments before Judge Douglass in 1906 that he was here throughout those arguments and participated in them. I do not know of any other business he was transacting except in connection with the suit pending before Judge Douglass. If there was any, I do not know of it, and I think I am in a position to know.

Some of these items may not be fully explained in the items of charge, take for example Item 253, Dec. 21, 1904 "To express on two packages, Chicago to Kansas City." That was for some records sent to me in the Cambria suit by Mr. Mecartney. The same is true of Item 254, concerning telegrams that are mentioned in here as being exchanged between Mr. Mecartney and myself. Those telegrams related to this Cambria suit and to nothing else.

Item 259 covers expressage on a trunk of records from Chicago to Kansas City. I know that the record was shipped back and forth between Mr. Mecartney and myself from
Chicago here. Even at that time, as early as Jan-
490 uary, 1905, the record had reached such a bulk as to require a trunk for its transportation. I know I went out and bought a trunk and charged it to Mr. Mecartney and he paid for it.

Item 270 relates to expenses of Mr. Brown, an attorney of Chicago, to Kansas City, assisting Mr. Mecartney, March 12 to 29, 1905. Mr. Brown was a very able and accomplished lawyer in Mr. Mercartney's office and came down here and helped draw some of the pleadings in this case. He helped

him in work incident to preparing an answer to the ancillary bill filed by the Receivers.

Item 272 was for drayage on that trunk full of records in the Cambria suit. Item 276 was for drayage on law books. These books were used in the argument in connection with this law suit. Item 278 was for an amount paid to a lock smith for opening a desk containing some papers. It was a desk over at the Guardian Trust Company that had papers in it relating to this suit. There was nobody at the Guardian Trust Company at the time in charge of its business except Mr. Hastings and we couldn't get into that desk and had to hire a lock smith to get the desk opened. The papers in it were papers material in the Cambria case.

Items 287 and 288 cover amounts paid by Mr. Mecartney to Barnard & Miller, printers, for printing reports on litigation. I know that such reports were furnished to the Guardian Trust Company, one of them was furnished to me in view of the litigation. Item 296 was for a trunk that contained this record. By that time, we had to get an additional trunk, the records had outgrown the original trunk we had. Item 305 was for $10.35 cable charges for a cablegram to Kuhn & Company. My recollection is that was an inquiry we made by cable to Kuhn & Company who were bankers in London and sustained an intimate relation to the Trust Company and the Suburban Belt Company as to facts in connection with
491 the $89,000.00 item which was in controversy between the Trust Company and the other parties to the litigation and the item which has always been known as the Degoijen item and pertaining exclusively to this Cambria suit. Item No. 314, under date of Nov. 13, 1905, is for $75.00 paid as a witness fee. I incurred that expense by employing H. P. Wright as an expert witness to give testimony in regard to the questions on stocks of various companies that were concerned, his testimony being given in the Cambria case.

Items 317 and 318 are charges on account of railroad fare and expenses of myself to Chicago, Aurora and Hinsdale, Illinois, all in connection with trips occasioned exclusively by the Cambria litigation.

I believe I have already stated that all telegrams passing between Mr. Mecartney and myself related exclusively to the Cambria case and all expenses where express was paid on trunks, that was expressage paid on trunks containing records in the Cambria suit. The same is true in respect to

all items in relation to drayage unless it may be for law books used on arguments in the Cambria case.

Item No. 349, dated May 8, 1906, was for $10.00 paid to the Wulser Contracting Company for a cabinet for records. That appears in my statements A to M inclusive, annexed to the Mecartney petition. It was for a cabinet of shelving which was made necessary by the enormous size of this record and in order to use it all, we had to get a cabinet for it, which I still have.

Item 359 covers the expense of a trip of Mecartney to Philadelphia and New York. I know about that trip. It was in connection with this Cambria suit exclusively.

Item No. 390, Dec. 19, 1907, is expressage on papers to Judge McPherson. Those were some papers that were sent to Judge McPherson by me in connection with his consideration of the injunction case which was then under argument or submission to him. It was decided by him along
492 early in 1908 by the granting of an injunction which was afterwards reversed by the Court of Appeals.

Item 392, under date of Jan. 8, 1908, is for $10.00 paid for a book case for Judge Douglass for the Master's records. I bought that book case for the Special Master because it was necessary for him to have it in order for him to be able to refer to the record at all. This was on account of its huge size.

Item 398, dated Jan. 8, 1908, was for a trip made in November, 1907, by myself to St. Louis, that is the trip that Mr. Mecartney and myself made to St. Louis to consult with J. C. Jones about further proceedings in the Cambria case.

I want to repeat that all items appearing on bills designated as Exhibits A to M, inclusive, to the Mecartney petition, I personally incurred those expenses and made the disbursements stated therein, and they were all for necessary expenses in the Cambria case. I know of no items on the account which appear in Mr. Mecartney's expense bill attached to his petition in the State Court suit and which appear on his own books, which were not incurred in the necessary defense or prosecution of the Trust Company's claims and those which were asserted against it. No items of disbursement mentioned in the account that were made after March 30, 1905 had anything to do with that Texas case. I refer to items paid out either by Mr. Mecartney or myself, in fact, I don't know of any disbursements made in connec-

tion with the Texas case at all either before or after March 30, 1905, the reason being that the period covered by those services was so comparatively short and also because there were no appearances in court, nothing occurred to give rise to expense. Whatever expense there was, was incurred by Mr. Mecartney in his employment of Mr. Histed which he paid.

Mr. Smith: We object to all of the foregoing testimony in support of Items 211 to 411, inclusive, on the grounds set forth in numbered paragraphs 1 to 7, inclusive, of our
493 written statement of objections. This objection was, by the Master, overruled, to which ruling, the Kansas City Southern Railway Company and the Cambria Steel Company duly excepted.

On cross examination by Mr. Smith, Mr. Rosenberger testified in substance, as follows:

At the time Mr. Mecartney and I left the Cambria case in March, 1908, the case, so far as the hearing before Special Master Douglas was concerned, had been fully reported and submitted. It had been argued orally and briefs had been furnished.

Mr. Smith: Mr. Rosenberger, I will ask you to examine page 1435 of the opinion of Judge Johnson in the Mecartney case and to advise me if you do not think I am correct in my statement about the Tichenor Item No. 112, and if you won't correct that Item accordingly.

Mr. Rosenberger: Yes, your statement would be correct as to the amount of that charge being $250.00 instead of $500.00 but Judge Johnson in that opinion, relieves Mr. Mecartney entirely of any bad faith in charging $500.00 to the Trust Company. Judge Johnson said that had been done by oversight.

Mr. Smith: Mr. Rosenberger in stating that Mr. Mecartney had no other work for the Trust Company outside of the Texas case and the Belt case, I want to call your attention to the following letter or report of Mr. Mecartney's, about October 23, 1905, appearing on page 314 and following the Mecartney record;

"Your acting president has requested me to make a report of matters under my charge in time for the coming annual meeting.

"You understand that no regular counsel was elected by the directors or executive committee for the past year, and when the matter was brought up late in the fall, the writer suggested that there was no absolute occasion for such a salaried official; but that matters could be referred from time to time, as they arose, to counsel and he be paid
494 for work as actually done. This suggestion was adopted; and the writer believes it a far better plan than the salary plan and conduces more toward prompt disposition of business and is more economical in the end.

"Quite a number of matters, law suits and claims, independently of the Belt and Dock Company litigations, have been investigated and disposed of, and some half dozen legal opinions rendered upon matters of vital import. The total amounts paid the writer thus for, together with bills presented at the end of this fiscal year have been less than $2,-100."

"I was at first reluctant to attempt to serve the company as to its general matters, fearing that the Belt litigation was enough for me to undertake. But with the help of competent assistants, I have been able to take care of them with, as I hope, reasonable promptness.

"As to matters pending and disposed of, I report:

1. The bill of Trimble & Braley for over $22,000."

And then goes on and discusses that.

2. The claims vs. The Northern Connecting Company.

"These claims of the Guardian Trust Company, aggregating about $66,000 had been presented in an intervening petition which the trust company had filed in the foreclosure proceedings on said railroad. It was asserted that the same were preferential claims. Testimony had been taken and the matter was pending on a reference to Judge Douglass. The master, last spring, made an exceedingly long and exhaustive report of about 100 typewritten pages, in which these claims were rejected, except as to the amount of $1161.50, which he allowed the Trust Company.

"Other parties offered objections to his report, but he has never finally disposed of them. After investigating the matter, the writer concluded, and so reported to the then president, that there was no prospect of having the report overruled and we did not prosecute the matter further.

"3. The Mo. Railway Construction Co. Debenture Bonds, amount $53,433.17.

495 "The writer went east in the summer time and retained counsel there to make inquiries and collect data in regard to the assets of this concern. I, in the meantime, pursued my inquiries in Chicago and finally got track of the books and I have been promised that they will be at my disposal for inspection within a very few days. If they do not turn up, I shall at once take proceedings in court and examine under oath the parties who were last in control of the company and who should know of its affairs."

"The Texas suit at Beaumont in which the Channel and Dock Company, set up a claim of stock liability for $1,500,000.00 against the Guardian Trust, and in which the Guardian Trust Company claimed about $30,000 as due from the Dock Company, was compromised about the first of April last, as heretofore reported.

" 'The Benedict Zinc Case' in New York, was, as has likewise been reported, finally decided against the Trust Company and the judgment was satisfied.

"The Quincy 'Zinc' Case at Kansas City was compromised. The First National Bank Case at Kansas City was finally decided against the Trust Company and the judgment was paid. The amount, about $35,000, with interest, is a valid claim against the Kansas City Southern Company and the latter has been sued in the State Court therefor.

"5. The Intervention Petitions in the Foreclosure Case of the Pittsburg and Gulf, involving claims for the services of counsel, rendered such Trust Company, as Trustee in the mortgages on the Texas and Louisiana part of the old Gulf System, were investigated and reported upon adversely by me last spring, and as a part of the terms of settlement of the Texas litigation they were [itemissed] as to such items.

"6. As to the claim of $22,000 of Coupons vs. the Gulf Road: I investigated this claim last spring. My associate, Mr. Histed, made me an exhaustive seven page report thereon, and after considering the [the] matter thoroughly
496 with him, I concluded that there was no prospect of recovery and I orally reported the same to the president and executive committee, expecting later to follow it up with a formal report, for which this report is now tendered.

"7. Other Claims. Set up by way of intervention in various proceedings, which are worthy of note are involved in the

Belt accounting case and need not be here commented upon; and with the exception of those so involved the 'slate' has been practically cleared.

"8. The Bierce case. This is the case, as is well known, in which the receiver for the Guardian Trust Company was appointed.

"Since the discharge of the receiver in 1902, practically nothing has been done therein, but the case still stands upon the docket undisposed of, and as one in which no final hearing has been had." Do you remember now, Mr. Mecartney, that he did have other business with the Trust Company at the time he was employed?

Mr. Rosenberger: I don't recall saying anything to the contrary in my testimony. Unquestionably he had other employment from the Guardian Trust Company. My testimony is that none of these items charged to this account had anything to do with those other cases. He did have other employment by the Guardian Trust Company and was paid fees therefor separately and charged those fees separately. Mr. Mecartney was employed by the Trust Company after his employment in the Belt case, to represent the Trust Company in a very animated law suit between it and Trimble & Braley and he defended that suit all the way to the Supreme Court. He charged the Trust Company a fee for that. He was not paid and he brought suit for the fee in this Mecartney suit, but confined the allegations touching it to the second count of his petition and recovered it. What he recovered for his services in the Trimble & Braley suit is not included in the count we are investigating. There were a variety of other matters just as Mr. Mecartney states in that letter but he billed the company separately for those items.

497 Mr. Smith: Mr. Rosenberger, there were three suits brought in the state court, were there not?

Mr. Rosenberger: That is my recollection.

Mr. Smith: And in each of those three cases, or so called cases, the claim was made the Kansas City Southern was liable for the debts of the Belt Company by a consolidation arrangement that had been made?

Mr. Rosenberger: Yes, in the third one it was liable for the debts of the Pittsburg & Gulf.

Mr. Smith: In the Pittsburg & Gulf?

Mr. Rosenberger: That was a question that had to do with the accounting case.

Mr. Smith: It did?

Mr. Rosenberger: I think it was absolutely part and parcel of it, with the accounting case.

Mr. Smith: With the accounting case; you brought your suit in the state court to enforce this liability independent of litigation in the federal court?

Mr. Rosenberger: Yes; the independent suits all involved the same as in the Federal Court.

Mr. Smith: But the pleadings filed in the Cambria case didn't have anything to do with those cases in the state court at that time?

Mr. Rosenberger: I think they were all necessarily involved; the Court of Appeals so treated it.

Mr. Smith: Do you mean to say, Mr. Rosenberger, that the suits in the state court called for an accounting also?

Mr. Rosenberger: No; no, but they sought to recover the same debt that was in litigation in the Federal Court. The subject matter of the litigation was exactly the same.

Mr. Smith: But at that time, at the time those suits were filed, nobody had filed an answer in the state court asking for an accounting, had they?

498 Mr. Rosenberger: Had they done that at the time those suits were filed?

Mr. Smith: No; I mean did they in those suits?

Mr. Rosenberger: My recollection is when the answers ultimately came in they asserted the courts had no jurisdiction, because the subject matter of the controversy was involved in the Federal Court. And my recollection is those pleas were overruled.

Mr. Smith: Now did they demand an accounting?

Mr. Rosenberger: That is my recollection.

Mr. Smith: But they never had any accounting in the state court?

Mr. Rosenberger: No; and no testimony was taken in the state court.

Mr. Smith: Now the third of those cases was one brought against the Kansas City Southern on the claim it was liable for the debts of the Pittsburg & Gulf?

Mr. Rosenberger: Yes; and that case is still pending.

Mr. Smith: Now the services for bringing of that suit are charged in this first count of the petition?

Mr. Rosenberger: Yes; they all grew out of that reorganization plan. Nothing was ever done in that case that I know of.

Mr. Smith: But the Belt Company was not involved in that case at all, was it, in the Pittsburg & Gulf case?

Mr. Rosenberger: No.

Mr. Smith: And the Cambria wasn't involved in it?

Mr. Rosenberger: Well now, to be sure you make clear what you mean by "it", in the third suit filed?

Mr. Smith: Yes.

Mr. Rosenberger: The last suit filed?

Mr. Smith: Yes.

Mr. Rosenberger: No, neither in the Cambria suit nor the Belt line.

Mr. Smith: Nor the receivers of the Belt Company in this third suit, the one on account of the Pittsburg & Gulf claim?

Mr. Rosenberger: Not otherwise than it was the re-
499 sult of the same plan of reorganization.

Mr. Smith: Now Mr. Mecartney also participated somewheres along the line in the Filrst National Bank case, did he not?

Mr. Rosenberger: Yes.

Mr. Smith: As counsel, I mean, in that case and in the subsequent development of it?

Mr. Rosenberger: He did after the case got in the Supreme Court, but you should understand that the First National Bank's claim was just as much a part and parcel of the Guardian Trust Company's claim against the Belt Company as any other item involved in its indebtedness due from the Belt Company and claimed to be due from the Southern Company; and, in fact, was brought into the Cambria accounting case by a supplemental pleading.

The Master: Before the Master?

Mr. Rosenberger: Before the Master; seeking to charge the Southern Company and the Belt Company with that indebtedness.

Mr. Smith: But what I am getting at is, Mr. Rosenberger, that had nothing to do with the accounting branch of the case and had solely to do with the question of the liability of the Kansas City Southern for debts of the Belt Company?

Mr. Rosenberger: Oh yes, it had to do with the accounting part of the case most decidedly, as much as any other part of the things afterwards recovered by the Trust Company. Now I know what you are getting at and I think my answer will satisfy you. Mr. Mecartney appeared for the Guardian Trust Company in the Supreme Court in the suit between the First National Bank and the Guardian Trust Company, and charged and collected a fee for it. It has nothing to do with the account the Master is investigating here. After it had been established that the Guardian Trust Company was liable on the note which was the subject matter of that suit between the bank and the Trust Company, the Trust Company asserted as a liability against the Belt Company and the
500 Southern Company that amount which it had paid out in satisfaction of the bank's judgment.

The Master: By a supplemental pleading?

Mr. Rosenberger: By a supplemental pleading, and evidence was introduced before the Master on that point.

Mr. Smith: But, Mr. Rosenberger, what I am getting at is this: this litigation took on the aspect of two branches; there was the accounting branch, in which was considered the question of whether the Belt Company was indebted to the Trust Company, or vice versa; and there was the other branch, to-wit: if the Belt Company was liable to the Trust Company, was the Southern Company liable for its debt?

Mr. Rosenberger: I think that is a fair statement.

Mr. Smith: Two distinct branches of the problem.

Mr. Rosenberger: I wouldn't say they were distinct.

Mr. Smith: Well, they were separate propositions involved?

Mr. Rosenberger: They were separate propositions, yes.

Mr. Smith: Mr. Rosenberger, you testified in the Mecartney case, did you not?

Mr. Rosenberger: Yes.

Mr. Smith: I will ask you if you made these answers to these questions—now I am not doing this to contradict, you understand, but just to get it in in the right way?

Mr. Smith (reading): "Q. What was the nature of that litigation? A. I, of course, at that time was not familiar with the nature of that—litigation and to look a long time and a most energetic and industrious amount of study to become familiar with it. I assume by your question you want to know what the subject matter of that litigation was and the conditions involved therein. Q. Yes, sir. A. The litigation was two-fold. It involved first, the establishment of the guardian Trust Company of a very large indebtedness due it from the Kansas City Suburban Belt Railroad Com-
501 pany, and in that connection, and in the proceedings then pending, to establish such indebtedness, it involved the successful defense of the Trust Company against certain claims and charges of the Kansas City Suburban Belt Railroad Company; claims and charges which the Belt Company claimed not only offset the debts due from the Belt Company to the Trust Company but in a proper accounting, as it claimed, would leave a large balance due to the Belt Company. The other branch of the litigation was the establishment of any claim which might be out by the Trust Company against the Belt Company as a debt against the Kansas City Southern Railway Company, which had become the successor of the Belt Company. Do you desire to have me go into further detail as to the issues involved?"

Mr. Rosenberger: Speaking generally, the answer that I made in the testimony to which you called my attention as a summarization of the pleadings, issues in the Cambria suit, is correct; but it doesn't go far enough. If I had gone farther and stated the facts more amply I would have stated that involved in the accounting suit necessarily is the claim that was always set up in the Cambria suit, that the Cambria case was just merely a fictitious suit brought by the Cambria Steel Company as a mere tool or stool pigeon for the Kansas City Southern and its reorganization committee. That claim was always in the case and the whole litigation from the very day it commenced in 1900 was fostered and prompted by the Kansas City Southern Railway Company and its promoters.

Mr. Smith: Mr. Rosenberger, we can agree, can we not, that the judgment in the First National Bank case was affirmed by the Supreme Court of Missouri on March 16, 1905, that being the date stated in the opinion?

Mr. Rosenberger: If you are sure if that is the date, why, we can certainly agree on it, if you have looked it up and know right.

502 Mr. Smith: Mr. Rosenberger, you have stated with reference to the printing of briefs, Items 138 to 165, that some of them were printed in Chicago; of course, you don't know all of the briefs that Mr. Mecartney had printed, do you, in Chicago, and included in this bill? You wouldn't attempt to say?

Mr. Rosenberger: I think he always sent me a copy of of them as soon as they were printed.

Mr. Smith: Well, didn't he print other things besides briefs?

Mr. Rosenberger: In those items?

Mr. Smith: Well, I don't know; I am just asking you if he didn't do it; wasn't he given to printing pamphlets?

Mr. Rosenberger: No phamphlets that are enumerated in this account. Of course, he got out a pamphlet since the case was decided about the peace in Europe, and things of that kind; but no items of that kind in this.

Mr. Smith: Well, he printed his reports, did he not, to the Trust Company concerning the business of that company.

Mr. Rosenberger: Fequently he would make his reports as to the status of the Belt Litigation in printed form.

Mr. Smith: And other matters; did he not, for instance, this matter I read about the various items he had, that was a printed report, wasn't it?

Mr. Rosenberger: I wouldn't say from memory whether printed or not.

Mr. Smith: But he did print those reports generally?

Mr. Rosenberger: I wouldn't say generally; sometimes they were in typewritten form; sometimes printed; great many stockholders of the Guardian Trust Company interested and in order to avoid multiplying them otherwise he would sometimes have them printed.

Mr. Smith: You can't tell from your recollection of what he sent to you what were the briefs in this matter and what printed briefs and what were reports?

503 Mr. Rosenberger: Yes, I don't remember his sending anything extraneous.

Mr. Smith: Mr. Rosenberger, I would like to ask you regarding Item 284, referring to the payment of $25.00 to McDonald for copy of Knott letter?

Mr. Rosenberger: I have a recollection about that, Mr. McDonald was a reporter for the Star, as I recall it. Mr. Knott was president of the Kansas City Southern at that time. Mr. Knott took his pen in hand and wrote a communication to the Star about a matter which I considered contained important items relating to this Cambria suit and I wanted the original of that letter and I asked Mr. McDonald to get that original; published in the newspaper, but I wanted the original and I think I gave him that money for his time and trouble in getting it. Whether it was introduced in evidence in the case—in the Cambria case—I don't now recall. But I know that it was in connection with this Cambria case and also the reorganization affairs of the Kansas City Southern.

504 Q. Why, Mr. Rosenberger, you, yourself, were associated with the Star for a long time, were you not? A. Yes, sir. Q. Couldn't you have gotten it yourself by asking for it? A. Perhaps I could, but I spent my days in the Belt case. I didn't have much time to be chasing around for this. Q. Why did you have to pay him $25.00 to get a letter of that kind? A. I have given you the reason. I needed somebody who was connected with the paper, to get it; didn't have time to do it myself. Besides all that, I want to remind you that that item was charged up by Mr. Mecartney in his suit against the Guardian Trust Company and was allowed as a just item. As counsel know, I make the objection that it is for the purpose of reopening the case. (p. 570).

The circumstances regarding the Frank B. Wilcox items, No. 182 and 183, are as follows: Included in the indebtedness of the Guardian Trust Company which it was seeking to charge against the Belt Company primarily, and the Southern Company, as its successor, was an item of approximately $89,000.00 known as the Degoijen item. There were entries on the books of the Kansas City Suburban Belt Railway Company and on the books of the Trust Company touching that item. The transaction was a complicated one.

The officer of the Trust Company who had to do with making the entries on its books and the corresponding entries on the books of the Belt Company was at the time the transaction occurred, Frank B. Wilcox. The disbursements were made in March and April, 1905. Wilcox had for years ceased to have any connection whatever with the Belt Company or with the Trust Company. He did not even live in Kansas City. It was believed by me and by the officers of the Trust Company
505 that Wilcox would be able probaby to fully explain that transaction, he having been personally involved in it. We finally located him in some other city, I don't know just where, and at my request, Mr. Mecartney got in touch with him and told him that I needed some testimony on that subject and asked him to come to Kansas City to see me. Wilcox came to Kansas City and we discussed that item and he told me he would be unable, after a lapse of so many years to throw much light upon it unless he could have an opportunity to examine the books; and he declined to examine the books and give any testimony on the subject unless he was paid a reasonable compensation for so doing. I agreed to compensate him and he immediately occupied himself with examining the books of the Railroad Company and the Trust Company and went through the transaction thoroughly. He then had an extended conference with me and explained the transaction fully. Mr. Moore called him as a witness on other subjects. I cross examined him and elicited from him the facts as to which his memory had been refreshed by the examining of the books. After he had given his testimony, I paid him the amounts shown in Items 182 and 183. It is my recollection that Item No. 182 was paid by a draft for $450.00 which I gave him on Mr. Mecartney. Mr. Mecartney paid the draft.

Mr. Smith: Mr. Rosenberger, isn't it the fact about this Degoijen transaction, what I stated the other day, that it was a part of a series of false entries on the books of the Guardian Trust Company and Belt Company by which a false dividend was declared to give a false value to the stock of the Belt Company?

Mr. Rosenberger: I never so regarded it.

Mr. Smith: Didn't this Degoijen transaction consist of the transfer of the notes that were owed by the Belt Company as debt to the Trust Company, as one of its debts to the Trust Company, the Trust Company assuming that indebtedness and thereby making, permitting and inducing the

Belt Company to make a statement of its earnings and assets that excluded that liability?

506 Mr. Rosenberger: All of the facts in connection with that Degoijen item are developed fully in the record in the Cambria case. You asked me what the facts were, but I was counsel in the case. All I had to do was to elicit that evidence.

Mr. Smith: You have stated here you were of the opinion it was an honest transaction?

Mr. Rosenberger: Absolutely.

On Thursday, February 7, 1924, at 9:30 o'clock A. M. hearings before the Master were resumed and Mr. Rosenberger further testified on cross examination by Mr. Smith, in substance, as follows:

Mr. Smith: Mr. Rosenberger, in each of the injunction cases on which appeals were taken in the Court of Appeals, the first of those injunctions went up solely on the pleadings, did it not, no evidence taken?

Mr. Rosenberger: I think that is true with respect to both of the injunction appeals. I don't know of any evidence being taken on either one of them.

Mr. Smith: Mr. Rosenberger, in the Mecartney case, just in order to expedite this question, I will ask you if this question was asked you and this answer was made—that is in the Mecartney case in the state court: (Reading)

"Q. Now at that stage of the case, the amended pleadings having been filed, you could have raised by demurrer all the questions as to the general validity of this accounting, could you not?"

"A. Not with any hope of success, and for several reasons which I will give you. In the first place, before we came into the case, and without criticising counsel, because the best counsel can make mistakes, there had been a great mistake made, there was not only the Judge Black and Trimble & Braley stipulation, but in the answer filed before we came into the case they had expressly invited an accounting, and signified their willingness to an accounting, and in answer to

507 that question all the testimony taken before we came into the case had been taken."

Now that is all I wanted to cover in the question. Did you make that answer to that question? That is from page 774 of that record?

Mr. Rosenberger: That is the case before the Master, in that case?

Mr. Smith: Yes, that is the case before Judge Douglass where it refers to that case?

Mr. Rosenberger: I find from an examination of the question and answer that you have not read my answer in full.

Mr. Smith: No; I said that was all I cared to ask, to cover by my question. I just wanted to get that fact.

Mr. Rosenberger: Inasmuch as the remainder of my answer explains the answer I think, it is clear to me, you should read my answer, my whole answer.

Mr. Smith: Well, that is all right, Mr. Rosenberger. I just asked that much because that was all I wanted.

The Master: That is not all.

Mr. Rosenberger: No, sir. (Reading) "Now if we had stopped at the close of all the evidence at the stage of the case wherein we had promises from the Master that he would immediately go to work and get out his report, and that the matter would be terminated at a short date, for us to then stop in view of what had taken place in the past and file demurrers, and consume all that time in attacking pleadings, I think we would have been justly criticised if we had done that." That was my complete answer made at that time, but that does not go into all of the reasons that we had for not filing demurrers.

Mr. Smith: That isn't the point I have in mind, Mr. Rosenberger. All I have asked is, did you make that answer to that question?

Mr. Rosenberger: Yes; and I claim the right to elaborate that answer by stating, in addition, that stipulation to which I called attention in that testimony expressly provided the accounting should be expedited by the complainants, who, at that time, and who almost up to the close of the taking of testimony, were putting in their proof and instead
508 of expediting the thing were shoveling in testimony for months and months and years; kept on doing it, and that was the abuse that we complained of. Instead of expediting the accounting, as they had pretended they were going to do, why, they got Judge Trimble to sign that stipulation and the accounting was drawn out for years and years and for ten years after that time the case was still open before the Special Master.

Mr. H. S. Mecartney, who was the plaintiff in this case in which the Mecartney judgment was obtained, had his law office at all times in Chicago; that is where he practiced law. His home was a suburban home at Hinsdale, Illinois, near Chicago. That was true at the time he was employed in this case, and Hinsdale continued his home throughout all of his connection with it; and his home is in Hinsdale yet, and his law office is in Chicago yet, so far as I know.

509 On redirect examination, Mr. Rosenberger testified, in substance, as follows:

Some reference has been made here to the intervention involving about $132,000.00 which was filed in the Kansas City, Pittsburg & Gulf case, and to which Mr. Mecartney and I gave attention. That intervention was strictly involved in the Cambria suit and was part of it. It appears that not long before the filing of the Cambria bill and before the Kansas City Southern Railway Company had obtained control of the management of the Kansas City Suburban Belt Railroad Company, the latter company had assigned to the Guardian Trust Company as collateral security for the Belt Company's debt to the Trust Company, a bill of about $130,000.00 which the Gulf Company was owing the Belt Company for switching charges. The Gulf Company was the principal tenant line of the Belt Company which furnished terminal facilities to the Gulf Company and rendered switching services to it here at Kansas City. The value of that collateral, of course, depended upon the ability to collect that bill from the Gulf Company which shortly afterwards went into the hands of Receivers, and in order to protect the collateral of the Trust Company in respect to these switching charges, the Trust Company filed an intervention in the Gulf receivership case. Practically no attention was given by either Mr. Mecartney or myself to that intervention. The Gulf Company went into the hands of receivers April 1, 1899, and it was not until 1904 that Mr. Mecartney and I were employed. Furthermore, from the papers and the documents of the Trust Company and of the Railroad Company
510 which came into our hands, it appeared that Trimble & Braley and Wash Adams had given practically no attention to that matter. The Trust Company had employed special counsel to look after that claim and other claims, that special counsel being the firm of Wolman, Solomon & Cooper. Whatever work was done on that Pittsburg & Gulf claim was done by Mr. Solomon. Mr. Solomon was paid fees by the Trust Company for his work in that case. That matter had escaped my attention when the bill that is before the Master

was filed and I omitted to direct Mr. Willey's attention to it when I asked him to file a statement, but I shall ask leave to file a supplemental account here, including in this claim, the money paid to Mr. Solomon for his services in protecting the Trust Company's collateral in this Belt Company debt, in fact, there were other matters which for a considerable period of time, were not charged to Mr. Solomon and to whom on account of his services, expenses were incurred and paid by the Trust Company which do not now appear in this account.

Mr. Smith: Mr. Rosenberger, I am not familiar with the facts with reference to that claim, but I have the impression, and I will ask you if I am correct in it, that that intervention was filed in the Pittsburg & Gulf foreclosure case, wasn't it?

Mr. Rosenberger: You are correct in that; necessarily had to be in order to obtain a preferential character to the claim, but, as I have stated, the claim was part of the collateral of the Trust Company's for the Belt Company's indebtedness and was part of the collateral which the Cambria Company and the Southern Company sought to re-claim and sought to prevent us from realizing on.

Mr. Smith: Now the fees that were paid or earned my Mr. Solomon, or his firm, would include services in connection with the intervention in the Pittsburg & Gulf foreclosure case?

Mr. Rosenberger: On behalf of the Trust Company in connection with the Trust Company's collateral to this Belt debt herein adjudicated in this case.

511 Mr. Smith: That intervention has never been decided as to what either—was that intervention ever decided in the Pittsburg & Gulf foreclosure case.

Mr. Rosenberger: I am not advised of its ever having been determined. Naturally after the United States Court of Appeals held we were entitled to recover our debt from the Southern Company, why, the intervention ceased to be of importance to the Trust Company.

Mr. Smith: But your statement that Wollman, Solomon and Cooper represented the Trust Company in that matter and were paid fees would, as I have stated before, present the question as to their fees in that foreclosure case—the Pittsburg & Gulf foreclosure case—as well as this case?

Mr. Rosenberger: It had nothing to do with the foreclosure.

Mr. Smith: But it was filed in that case, wasn't it, intervention filed in that case?

Mr. Rosenberger: Yes, it was filed in that case, as I say, to protect the collateral to the Guardian Trust Company and this is the same indebtedness we have in this case.

512 Q. But that was before this suit was ever filed?

The Master: Which suit?

Mr. Smith: Before this Cambria suit was ever filed?

A. No, not that I am advised.
Q. Wasn't intervention filed in the state Trust Company's case prior to the filing of the bill?
A. Possibly so, but if it was filed little or nothing was done with it until after the Cambria bill was filed. (p. 584.)

Mr. H. B. Leavens, called for further cross-examination by Mr. Smith, testified in substance, as follows:

Mr. Smith: Mr. Leavens, I will get you to state if you yesterday received from me a telephone request to see whether the Guardian Trust Company had an account with Mr. Mecartney showing the payment of any fees in addition to those stated in the account that is filed in this case?

Mr. Leavens: You did.

Mr. Smith: What record have you here, or, rather, did you find any evidence of payments to him?

Mr. Leavens: I did.

Mr. Smith: This account, Mr. Leavens, shows the following payments to Mr. Mecartney:

513 Mr. Smith: "December 8, 1904, $5,000.00?"

Mr. Leavens: Yes, sir; retainer.

Mr. Smith: Yes; "September 27, 1905, $5,000.00?

Mr. Leavens: Yes.

Mr. Smith: "February 13, 1906, $5,000.00?"

Mr. Leavens: February 3rd, $5,000.00.

Mr. Smith: Yes, sir; "August 15, 1906, $5,000.00?

Mr. Leavens: Yes.

Mr. Smith: "July 31, 1907, $7,500.00"?

Mr. Leavens: Yes.

Mr. Smith: What other payments were made to him?

Mr. Rosenberger: Wait a minute, just a minute; I would like to have that question made more definite; you mean by "other payments" payments not mentioned in the account here before the Master?

Mr. Smith: I have said—exclusive of the judgments, I can add that if you like.

Mr. Smith: What payments, what other payments were made to him prior to January 1, 1918, if any?

Mr. Leavens: "June 21, 1905, advanced for investigation of Missouri Railway Construction Company, $500.00; December 4, 1905, to funds advanced legal expenses $300.00". That is all the account shows.

Mr. Smith: What are the limits of that account, when does it begin and when does it end?

Mr. Leavens: Begins December 8, 1904, and ends July 31, 1907.

514 Mr. Smith: Is there another ledger after that, with reference to payments?

Mr. Leavens: I haven't looked for one.

Mr. Smith: I want to say this, if the Master please, that we may make this prima facie showing as best we can. We have no right to go through the Trust Company's books and if there is any other payment made to Mr. Mecartney for any other services here we have done our best to get it and we demand, if there is any other claim for any other figure, we ask the Master direct that showing be made by the Trust Company's books.

Mr. Rosenberger: What possible relevancy would it have if any such payments were made after they paid that Mecartney judgment? Why, if it were a claim that some charge was being made for it in that account, it would be different. (p. 588.)

The Master: Mr. Leavens, were you requested by Mr. Smith to examine the books of the Guardian Trust Company to see what payments were made to Mr. Mecartney other than those included in this amount before the Master?

Mr. Leavens: I understood his request to be to find if I could an account in which these items mentioned in this statement are incorporated and see if there were any other items that were in that account and not included.

Mr. Smith: Mr. Leavens, didn't I do this: didn't I state, ask you if you had a copy of this account and you said you didn't have one before you and then I said to you I would like to have your testimony whether or not there were ony other payments made to Mr. Mecartney other than those stated in the account, and I got the Trust Company's statement of account and telephoned to you stating those that were paid?

A. That is it exactly. (p. 590.)

Mr. Rosenberger: Q. And what is the last payment made to Mecartney shown by that book?

515 A. July 31, 1907—

Mr. Rosenberger: Now to accommodate these gentlemen will you please look at the ledgers containing entries subsequent to December 31, 1907, and see whether any other payments were made to Mr. Mecartney and come back and report to the Master?

Mr. Leavens: I will do my best in that direction.

Mr. Rosenberger: I am sorry they require it. I know you won't find anything, but then you go ahead and try and find it; anyway they want to be satisfied about it.

Mr. Smith: I am perfectly willing to accept your statement that is all that were made, is that your statement?

Mr. Rosenberger: Mr. Smith, absolutely the last dollar he got out of the Guardian Trust Company by voluntary payment was that item of December 31, 1907.

Mr. Crane: On December 31st?

Mr. Rosenberger: Yes.

The Master: July 31st, $300.00?

A. July 31st, $500.00.

The Witness: July 31st, $7500.00.

Mr. Rosenberger: Everything that was paid to him subsequently was paid in satisfaction of final judgments of the courts, the first judgment being suit in the state court, affirmed by the Supreme Court of Missouri; and the next judgment being that in the Federal Court for services rendered subsequently on appeal in this Cambria suit.

Mr. Crane: We will take that statement. Mr. Leavens does not need to look any farther. If he says there is nothing further, well take that statement. (pp. 591, 592.)

516 To sustain the issues on their part, the Kansas City Southern Railway Company and the Cambria Steel Company thereupon offered the following oral and documentary evidence, to-wit:

HARRY A. JETMORE, being duly called and sworn as a witness on behalf of the Kansas City Southern Railway Company and the Cambria Steel Company, testified in substance as follows:

I was the official reporter who took the testimony in the Cambria litigation from the beginning to end. In taking that testimony, I made four copies, one original that
517 went to the Court for the Master, one copy furnished the Guardian Trust Company and two copies to the Kansas City Southern or the Suburban Belt. My bills and vouchers in Mr. Leavens office or Mr. Flower's office, these were made by me from the transcripts. I have checked over these bills and vouchers and have made a statement of how much was carbon copy and how much was original on each of those vouchers. The Kansas City Southern Railway Company's Exhibit "B" is a statement that I prepared after going over the Trust Company's vouchers with my bills attached thereto. The statement shows the item number on the Trust Company's bill, the voucher number, the date of the voucher, the date of my bill, and I have subdivided the amount of the bill showing the bill for the original, for the carbon and the total bill making three columns of it. The statement merely covers charges made by me to the Trust Company and the amounts they paid me. I made no charge against them for the original of any testimony that was taken on behalf of the complainants in that litigation. When they took the testimony, the original was charged to them. It was only the original of this testimony that was furnished to the Master. The Suburban Belt started the taking of testimony. When they would take their testimony, they paid for the original copy and their carbons and the Guardian Trust Company paid for their one copy. When the Guardian Trust Company took their testimony, then the Guardian Trust Company paid for the original and their carbon copy and the Suburban Belt Railroad paid for their two carbon copies. This statement shows that the Trust Company paid for the original copy $2725.77, and for their carbon copy of the record, $3748.95, making a total of $6774.72.

The Kansas City Southern Railway Company's Exhibit "B", being the statement referred to in the testimony of wit-

ness, was thereupon offered in evidence by the Southern Company and is in words and figures as follows:

518 Kansas City Southern Railway Company's Exhibit "B"

Guardian Trust Company Vouchers
Issued
To H. A. Jetmore

Item No.	Voucher No.	Voucher Date	Bill Date	Original	Carbon	Total Bill
4	317	7-14-03	5-25-03	$	$ 487.75	$ 487.75
5	448	12- 1-03	11-25-03		168.90	168.90
6	510	2-16-04	2- 8-04		77.16	77.16
7	621	7- 1-04	6-30-04		296.87	296.87
8	689	8- 1-04	8- 1-04		36.17	36.17
9	719	10-27-04	10-25-04		43.16	43.16
10	831	3- 1-05	2-28-05		96.00	96.00
11	[illegible]05	3-30-05	3-26-05		209.17	209.17
12	867	4-30-05	4-17-05		132.50	132.50
13	890	5-15-05	5-10-05		123.92	123.92
14	912	7- 1-05	6-30-05		515.50	515.50
15	923	7-11-05	7-10-05		137.75	137.75
16	940	8-14-05	8-11-05		172.08	172.08
17	944	8-25-05	8-25-05	352.25		352.25
18	953	9-12-05	9- 8-05	3.50	50.50	54.00
19	968	10- 4-05	10- 3-05	182.75	411.58	594.33
20	1000	11-14-05	11-13-05	147.50	221.08	368.58
21	1023	12-19-05	12-18-05	177.00	169.88	346.88
22	1031	1- 9-06	1- 4-06	.50	212.08	212.58
23	1035	1-23-06	1-20-06	249.25	92.75	342.00
24	1040	2-13-06	2-12-06	46.50	146.55	193.05
25	1048	2-21-06	2-20-06	157.50	2.08	159.58
26	1075	3-24-06	3-22-06	180.50		180.50
27	1079	3-27-06	3- 9-06	300.00	15.58	315.58
28	1080	3-29-06	3-29-06	208.60		208.60
29	1097	4-26-06	4-21-06	527.67	87.11	614.78
30	1171	9- 5-06	8-20-06	177.25	37.00	214.25
519	Exhibit "B" Cont'd					
31	2032	4- 1-07	2-28-07	$ 10.00	$ 5.83	$ 15.83
32	2236	8-28-09	8-31-07	5.00		5.00

On cross-examination by Mr. Rosenberger, Mr. Jetmore testified in substance, as follows:

Mr. Rosenberger: Now, Mr. Jetmore, I am going to ask you touching the amount of time and work that counsel were giving before Special Master Douglass, particularly Judge Trimble and Wash Adams. During the time from the beginning of the testimony which you reported down to December 1904, I wish you would give the Master some ideas as to

how often the testimony was taken and what it involved, the amount of time the lawyers were giving to that case.

Mr. Jetmore: My impression is the bulk of the evidence was taken after December, 1904.

Mr. Rosenberger: Don't you recall sixteen volumes of testimony had been taken before Mr. Mecartney and I got into the case?

Mr. Jetmore: I expect you are right.

Mr. Rosenberger: You remember that Mr. Willey was on the stand?

Mr. Jetmore: He was on the stand covering a period of about a year, not all the time, of course. We had a great many recesses, of course. We had a great many hearings. He spent a great deal of time and did a great deal of work there. Judge Trimble and Wash Adams were appearing for the Trust Company.

Mr. Rosenberger: To refresh your recollection, I will hand you a list of sessions compiled from the record before Judge Douglass as Special Master and ask you to state whether you don't find there were one hundred and three sessions before Judge Douglass from the time the testimony began on January 15, 1903 to December 20, 1904 when Mr. Mecartney and I were employed.

Mr. Jetmore: I have looked at this statement and find it to be a statement I prepared myself. It was taken from the record. There seem to be one hundred and three sessions down to December, 1904. This statement has the fol-
520 lowing foot note at the end of it which is my memorandum:

"The above list does not include any of the sessions covering testimony of the witness F. B. Wilcox, who was on the stand for a period of two weeks, during which examination the sessions commenced at nine thirty in the morning and continued without interruption until ten at night; nor does said list include any of the examination of witnesses J. H. Cochran and George E. Wall. These sessions are estimated at about sixty in addition to above listed." Now someone has interlined here: "nor does said list include any of the sessions covering the cross examination of the witness Johnson." Then here is another foot note: "January 15, 1903 to January 29, 1903, two weeks spent by attorneys for complaints with counsel for Trust Company in ex-

amination of Trust Company's vouchers from 9:00 A. M. to 6:00 P. M. every day at office of the Trust Company."

A good many of the sessions held prior to December, 1904, were held in the night time. Judge Trimble and Judge Adams were both representing the Guardian Trust Company, and I think they appeared at every session. The accounts examined at that time were complicated and ran into millions of dollars. I think the Trust Company's account was $600,000.00. It involved the disposition by the Trust Company of stocks and bonds issued by the various railroad and subsidiary companies that were parties to the suit. It even involved the accounts of the various construction companies which had built sections of the railroad, such as the Missouri Railway Construction Company and of the real estate companies that took titles to the land.

521 Q. Don't you recall, Mr. Jetmore, that from the very beginning of the taking of any testimony that it was agreed and understood that the advancements by the Guardian Trust Company for either stenographic fees or Master's fees were to be divided, one-third to be paid by the Guardian Trust Company and two-thirds by the complainants in the case, namely: The Cambria Company and the Belt receivers?

A. No, Mr. Rosenberger, I can't remember it that way and my bills would indicate that I did not. Of course—

Q. (Interrupting) Leaving the phraseology of your bills out of consideration? A. Yes.

Q. Don't you recall that the orders that were made by the court making provisional allowances to Judge Douglass that the Guardian was always charged with a third of that and the complainants in the suit with two-thirds?

A. No; and I don't think I ever saw one of those orders or knew what allowance was to Judge Douglass—

Q. The costs were all divided one-third and two-thirds?

A. No, I think not. I had quite a wrangle over the question of stenographer's fees.

Q. But what that agreement was at the time you wouldn't be able to state?

A. The final agreement was according to my bills.

Q. What final agreement?

A. Or final order, whatever it was. I made my bills according to that agreement, or that stipulation, whatever it was. And so my bills—I am not talking about Judge Douglass' bills, or any of the bills in connection with it; just talking about the stenographic bills; can't go any farther than

that because I never gave it any attention; wasn't any of my business—

522 On redirect examination, Mr. Jetmore testified as follows:

Q. Now let me ask you about the order you spoke of, or stipulation; if such a document existed, or such an order was made, and it cannot be found I would like to have your recollection as to the provisions of it. Did that contain any provision that carbon copies were to be taxed as costs?

A. If here was such an order or a stipulation—which I am satisfied there was—it provided that the transcript should be paid for and that each party should pay for their own as I rendered bills. That is all.

Q. That is, each party should pay?

A. For the original taken by them.

Q. Of evidence introduced by them?

A. And the other party should pay when it came to theirs. (pp. 598, 600, 610.)

On redirect examination by Mr. Smith, Mr. Jetmore testified in substance, as follows:

Mr. Smith: Yes; and now with reference to these meetings: weren't there a great many of those meetings where you would go there and on one side or the other the lawyers would be engaged and the thing would be put off until some other day and no testimony taken?

523 Mr. Jetmore: Yes, or very small amount of testimony taken.

Mr. Smith: And you would cover that in your transcript of the evidence when you came to make it up, you would show each day they were in session?

Mr. Jetmore: It showed each day they were in session, according to this transcript; my transcript showed what was done exactly. If they did anything it showed.

Mr. Smith: But it shows in the record?

Mr. Jetmore: Shows in the record the length of the session; that is, where there was no testimony taken it shows adjournment; and where there was a session shows the length of it, transcript of what took place.

Mr. Smith: Wasn't Judge Douglass on the bench part of this time as Circuit Judge in the state court?

Mr. Jetmore: There at the last part, before it was finished, finally finished, Judge Douglass did go on the bench.

The hearing before Judge Douglass did not cover the Port Arthur Channel & Dock litigation in Texas; it covered, as I remember, eleven companies. It dealt with the Trust Company's relations with the Kansas City Suburban Belt Railway Company, the Kansas City and Independence Air Line, the Central Improvement Company, the Second Street Improvement Company, the Union Terminal Company, the Missouri, Kansas and Texas Belt Company, Missouri Elevator and Terminal Company, the Fairmount Amusement Company, the Consolidated Terminal Company, the Kansas City Fruit Auction Company and perhaps the Kansas City Northern Connecting Company. There were some others. I think it did not cover the Port Arthur Channel & Dock Company.

Mr. H. C. SPAULDING, called as a witness on behalf of the Kansas City Southern Railway Company and the Cambria Steel Company, having first been duly sworn, testified, in substance, as follows:

My name is H. C. Spaulding. I am Deputy Clerk of
524 the United States District Court.

Mr. Smith: If the Master please, we desire to make an offer of proof in this case on the question of good faith and reasonable grounds for filing and prosecution of these claims, and I want to offer this document in support of that. I offer in evidence the petition filed by Charles E. Grannis and B. J. Hickman, on April 1, 1899, in the case of Grannis, et al, vs. Kansas City, Pittsburg and Gulf Railroad Company and the Missouri, Kansas & Texas Trust Company, predecessor of the Guardian Trust Company.

Mr. Rosenberger: I object to it as having no relevancy at all. The petition was filed long bfeore the commencement of the Cambria suit, for one thing; in the second place, it is part of the files of the United States Court here and I question very much the right of the party to offer the original file in a suit of this kind, because the files belong to the court. If it were proper at all it would have to be offered in the form of a certified copy, because those files cannot be allowed to go out of the possession of the clerk, under the rules which have been in force by this court for many years. In the third place, being part of the files of the court in related litigation they are before the court and the Master

anyway for whatever they may be worth, without[formerly] being offered in evidence.

Mr. Crane: They are not in this case at all.

Mr. Rosenberger: I know, but that doesn't make any difference. The court can take judicial notice of its own files.

Mr. Smith: I want to state, if the Master please, this is contained in the transcript on removal of that Grannis case to the Federal Court and it bears the file mark of April 20, 1899, this court. Now on the question of the offering of the original, I want to say this: that the stipulation that was prepared by Mr. Rosenberger at the outset contains the provision that in the offering of any document from any court it may be referred to and that we shall incorporate it thereafter, or it may be accomplished in that way.

525 The Master: The objection will be sustained, on the broad ground that the District Court and the United States Circuit Court of Appeals have, in the opinion of the Master, foreclosed us considering the question of good faith.

Mr. Smith: I may understand you are not excluding it because we are offering the original and have not been to the expense of securing a certified copy.

The Master: No.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, at the time duly excepted.

The petition so offered in evidence, marked Kansas City Southern Railway Company's Exhibit 1, is in words and figures as follows:

"State of Missouri
County of Jackson—ss.

In the Circuit Court of said County at Kansas City.

To ..... Term, 1899.

Charles E. Grannis, B. J. Hickman, J. J. Cairnes, & Kansas City, Suburban Belt Railroad Company, Plaintiffs,

vs.

Kansas City, Pittsburg & Gulf Railroad Company, (a corporation), and Missouri, Kansas & Texas Trust Company, (a corporation) and State Trust Company of New York, Defendants.

Plaintiffs for their cause of action state as follows:

That they are citizens of Jackson County, State of Missouri, and stockholders in the Kansas City, Pittsburg & Gulf Railroad Company, co-defendant corporation, and bring this suit on their own behalf as well as on behalf of other stockholders or creditors or bondholders who may choose to become plaintiffs herein and to contribute to the expenses of the litigation.

That they are owners of stock in said Kansas City, Pittsburg & Gulf Railroad Company (co-defendant herein), as follows, respectively, to-wit:

526 Charles E. Grannis, four hundred shares of the par value of One Hundred Dollars each.

B. J. Hickman, seven hundred and forty shares of the par value of One Hundred Dollars each.

J. J. Cairnes, three hundred and sixteen shares of the par value of One Hundred Dollars each.

That the Kansas City, Suburban Belt Railroad Company is a corporation duly organized under the laws of Missouri, and is a creditor of the defendant railroad in the sum of twenty thousand dollars and more, and said indebtedness is long past due and unpaid.

That heretofore, to-wit, on or about November 6th, 1889, The Kansas City, Nevada & Ft. Smith Railroad Company under said name and style was by virtue of the laws of the State of Missouri, duly created and incorporated as a railroad corporation with all the privileges and powers of said corporation.

That the capital stock of said corporation was three millions, five hundred thousand dollars, composed of thirty-five thousand shares at the par value of one hundred dollars per share.

That thereafter and on or about January 27th, 1893, pursuant to the laws of the State of Missouri, applicable thereto, the name of said Kansas City, Nevada & Ft. Smith Railroad Company was changed to that of the Kansas City, Pittsburg & Gulf Railroad Company, and that said last named railroad, (the defendant herein), succeeded to and became possessed of all the rights, privileges, and franchises of the said Kansas City, Nevada & Ft. Smith Railroad Company.

That thereafter, by successive changes therein and pursuant to the laws of the State of Missouri, applicable thereto, the capital stock of said Kansas City, Pittsburg & Gulf Railroad Company, the aforesaid defendant was increased until it became and now is the sum of Twenty Three Millons of Dollars, being composed of two hundred and thirty thousand shares of stock of the par value of one hundred
527 dollars each.

That the said defendant, the Kansas City, Pittsburg & Gulf Railroad Company has its principal office and place of business at Kansas City, Jackson County, Missouri, where its President, Vice-President, General Manager and other chief officers reside.

That the said defendant railroad, by virtue of the charter and privileges aforesaid is now and for a long time has been the owner of and is engeged in running and operating its line of railroad from said Kansas City, Missouri, aforesaid, to Mena, in the State of Arkansas, being a distance of three hundred and seventy nine and nine-tenths miles.

That the said railroad property so owned by defendant as aforesaid, includes right of way, main track, side track, switches, railway stations, depots and land appurtenant thereto; also locomotives, passenger and freight cars, rolling stock and various other kinds and classes of property incident to a railroad and connected with its management and operation.

That defendant railroad herein is now and has been for a long time engaged in conducting and operating, (in connection with its own line above mentioned) the Texarkana & Ft. Smith Railway Company, a railroad extending from Mena, Arkansas, south a distance of one hundred and thirty miles to the Arkansas and Louisiana State line.

That the defendant railroad is now and has also for a long time been engaged in conducting and operating (in connection with its own line, and in connection with that of the Texarkana & Ft. Smith Railroad Company), the Kansas City, Shreveport & Gulf Railway Company, a railroad incorporated under the laws of the State of Louisiana and extending a distance of two hundred and twenty miles, from the termination of said Texarkana & Ft. Smith Railway Company on the Arkansas and Louisiana State line to a point on the Louisiana and Texas State line, and said defendant rail-
528 road has, through its connection with the Texarkana & Ft. Smith Railway Company at the last named place,

a through line from Kansas City, Missouri, to Port Arthur Texas, a distance of 784 miles.

That the defendant herein is the owner of the locomotives, cars, rolling stock and rolling stock equipment, used by it on the aforesaid line of the Texarkana & Ft. Smith Railway Company and on the line of the Kansas City, Shreveport & Gulf Railway Company.

Plaintiffs for their cause of action further state that its aforesaid road, extending from Kansas City, in the State of Missouri to the town of Mena, in the State of Arkansas, (a distance of three hundred and seventy-nine and nine tenths miles), is subject to a bonded indebtedness, duly incurred by the defendant, in the sum of Twenty-five thousand dollars ($25,000) per mile of main line, yard and terminal track and has deposited with the Missouri, Kansas & Texas Trust Company of Missouri and the State Realty Company of New York the bonds and stock of the Texarkana & Ft. Smith Railway Company of Twenty-five Thousand Dollars ($25,000) first mortgage bonds of said last mentioned railroad companies upon each mile of main line yard and terminal tracks, and in turn, has issued its, the Kansas City, Pittsburg & Gulf Railroad Company's bonds in the sum of Twenty five Thousand Dollars ($25,000) per mile of main line, yard and terminal track of said railroad companies, extending from Mena, Arkansas, to Port Arthur, Texas, making an aggregated bonded indebtedness upon the railroad extending from Kansas City to Port Arthur, Texas, in the sum of Twenty-three Million Dollars ($23,000,000) all issued by said Kansas City, Pittsburg & Gulf Railroad Company.

That said indebtedness is evidenced by twenty three thousand negotiable bonds, payable to bearer, in the denomination of one thousand dollars each, all bearing date April 3rd, 1893, and being payable on April 21st, 1923, with five per centum interest coupons attached thereto, payable on the first day of April and October of each year respectively.

529 That said bonds and bonded indebtedness is secured by a mortgage in the nature of a deed of trust bearing date April 1st, 1893.

That by the terms of said instrument last referred to, all the property of the defendant then owned by it or to be thereafter acquired and including its right of way, tracks,

rolling stock and equipment was conveyed to the Missouri, Kansas & Texas Trust Company, (a corporation duly organized under the laws of the State of Missouri, having its principal office at Kansas City, in said State and joined as co-defendant herein), and to the State Trust Company, (a corporation organized under the laws of the State of New York), to secure and protect the payment of all of the bonds above mentioned as well as the interest coupons attached thereto, as the same should become due and payable.

That the Kansas City, Pittsburg & Gulf Railroad Company, because of the inadequacy of its resources and its consequent inability to meet the payment of said interest coupons falling due on April 1st, 1899, last past, amounting in the aggregate to the sum of Five Hundred and Seventy-five Thousand Dollars, has made default in the payment of the same; that although, as plaintiffs are informed and believe, said defendant has made diligent effort to do so, it has been unable to borrow money to meet the aforesaid matured coupons, and is also unable to fix a time in the future when it can pay said coupons.

Your petitioner further states that there is outstanding and due from said Kansas City, Pittsburg & Gulf Railroad Company, (co-defendant herein), to various creditors, a floating indebtedness of five hundred and seventy-five thousand dollars, the payment of which it is now unable to meet.

That said defendant owes for rolling stock and equipment purposes, the sum of Two Millions of Dollars, that there is due each month on said indebtedness the sum of Forty Thousand Dollars, which, as plaintiffs are informed and believe, the said defendant will be unable to pay as the same falls due, if it is required at the same time to meet its outstanding
530 coupon and floating indebtedness hereinbefore mentioned.

Plaintiffs further state that said defendant, the Kansas City, Pittsburg & Gulf Railroad Company also owes various state, county and city taxes, aggregating the sum of nineteen thousand dollars, or thereabouts; that said taxes constitute a lien (which can be summarily enforced), on the property of said defendant and have not been paid because of its financial straits and embarrassments.

Plaintiffs state that the said Kansas City, Pittsburg & Gulf Railroad Company has not sufficient resources to meet its aforesaid matured and its maturing indebtedness, and that said corporation is insolvent.

That said plaintiffs apprehend that its creditors whose demands have matured will institute in courts of competent jurisdiction attachment suits or other legal proceedings to enforce the collection of their demands.

That said proceedings will result in a multiplicity of suits against the said defendant railroad, in the breaking up and disrupting of its business as a railroad and common carrier, and in the waste and destruction of its assets, to the great prejudice and wrong, not only of said railroad corporation, but of its creditors and stockholders, including plaintiffs herein.

Plaintiffs further state that as they are informed and believe, that if the property of said defendant railroad is held together and is carefully used in the transportation of passengers and property it will produce an income sufficient to pay all operating expenses and necessary repairs, leaving each year a surplus, sufficient to pay off and discharge the interest coupons, floating indebtedness, equipment charges and other indebtedness hereinbefore mentioned, and ultimately to protect to the stockholders, the value of their stock, or a great part thereof.

531 Plaintiffs state that the assets and property of said Kansas City, Pittsburg & Gulf Railroad Company constitute a trust fund for the benefit of the creditors and stockholders of said corporation, that there is no adequate remedy at law to prevent the disruption of its business and the destruction of its assets as hereinbefore stated, and to prevent the wrongs and injuries threatened as aforesaid, and for the preservation and protection of the rights of the plaintiffs as said stockholders aforesaid.

Wherefore, by reason of the premises, plaintiffs pray that the court will fully administer as a trust fund, all and singular the property, rights and franchises belonging to said railroad company, including said line of railway, with all its appurtenances, and will marshall all its assets and ascertain the several liens and priorities existing thereon, and enforce and decree the rights, liens and equities of each and all the stockholders (including plaintiffs herein) and creditors thereof, as the same may be fully ascertained and decreed by the court upon the respective interventions and applications of each and every creditor and stockholder.

That for the purpose of enforcing the rights and equities of the creditors of said railroad defendant, as well as of pro-

tecting the rights, interests and property of said corporation as far as possible, the performance of the duties which said defendant railroad corporation owes to the public as a common carrier, and as the carrier of the public mail, as well as to preserve the unity of the business and property of said railway company as the same has heretofore been maintained and operated and of preventing disruption thereof by separate executions, attachments or sequestration, that this court forthwith appoint one or more persons as Receivers of all and singular the property, rights, assets and franchises of every nature and wherever situated, held, owned, or controlled by said defendant railroad company, with full authority to maintain and operate the same under the direction of the court and that all of the officers, managers,
532 superintendents, agents, and employes of the said railroad company be required forthwith to deliver up to such Receivers the possession of all and singular each and every part of said property, wherever situated, and also of all books of account, vouchers and papers in any way relating to the business or operation of said railroad, and for an injunction restraining each and every one of the officers, directors, managers, superintendents, agents and employes of the said railroad company from in any way interfering with the possession or control of such receiver or receivers over said property and for such other and further relief as to the court may seem proper, and as may be necessary to fully protect the rights of your orators, and of all the creditors and stockholders of said railroad corporation.

C. A. BRALEY
EDWIN SILVERS
JOHN A. EATON,
Attorneys for Plaintiffs."

Mr. Smith: I next offer in evidence on that same issue, the good faith question, the opinion of Judge Thayer appointing a receiver in the Bierce case, filed in case number 2483, W. W. Bierce, et al, vs. Guardian Trust Company, on November 30, 1900.

Mr. Rosenberger: That is objected to, for the reason that it is an attempt to re-open the issues which have already been adjudicated finally in this Cambria Steel Company case.

The Master: The objection will be sustained.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

The opinion of Judge Thayer in the Bierce case so offered in evidence, and being Kansas City Southern Company's Exhibit 2, is in words and figures as follows:

533 "In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

W. W. Bierce, et al., Complainants,
No. 2483 vs. In Equity.
The Guardian Trust Company, Defendant.

Mr. Frank Hagerman, Mr. L. C. Krauthoff and Mr. Max Pam for the complainants.

Mr. J. E. McKeighan, Mr. J. McD. Trimble and Mr. T. L. Chadbourne, Jr., appeared for the defendants.

Memorandum On Motion To Appoint A Receiver

Thayer, Circuit Judge.

The subject matter now before the court is a motion which was made on the filing of the complaint to appoint a receiver for the Guardian Trust Company, a Missouri corporation. The bill on which the application is based makes a great variety of allegations and is very voluminous. The affidavits and accompanying exhibits that have been filed by the respective parties either to support or overthrow the allegations of the complaint are also very numerous and lengthy. Owing to this fact and the complicated character of some of the transactions that have been investigated, and the limited time at the disposal of the court—it will only be possible to state in a very general way for the information of counsel the conclusions that have been reached on the strength of which the accompanying order is based.

1. The bill of complaint as viewed by the court for the purpose of the present motion, is a bill filed by minority stockholders to correct abuses of administration and to obtain the appointment of a receiver because of the mismanagement of the company's affairs and various ultra vires acts heretofore committed by the directors and managers who were in active control of the corporation. These acts, it is claimed, in substance, have led to a dissipation of the company's assets and brought it to the verge of insolvency. The

bill also charges in substance, that acts of a similar nature are now in contemplation and will be committed in the future by those who are at present in control of the company
534 if such action is not stayed by judicial process. Counsel will understand that the order made herein is not based upon the theory that the bill is one filed by the complainants to cancel and rescind their stock subscriptions on the ground of fraud, or upon the theory that the complainants are in a position at this time to maintain such a bill, although no decisive opinion need be expressed upon that point. Neither is the order herein based upon the theory that between November 4, 1899, and January 4, 1900, a valid resolution was adopted or that an agreement was entered into to go into liquidation, which resolution or agreement had the effect of impressing all the assets of the company with a trust as of that date which may now be administered by a court of equity at the instance of the complainants. Counsel will understand that the court rejects for the present each of said theories and does not predicate its action thereon.

In passing, however, it may be said, that such action as was taken by the Executive Committee of the company or its Board of Directors, or other persons interested in the company, at meetings or interviews between the dates last aforesaid, is of importance, in that it throws much light on the actual condition of the company at that time and at the present moment. After reading all the affidavits and the records of the company relative to what transpired at said meeting or interviews between the dates aforesaid—the court concludes that it was the unanimous opinion of all persons then connected with the company who were conversant with its affairs that it was in a precarious condition; that practically all of its capital had been invested in stocks, bonds and notes and in real property which were not readily marketable; that many of its stocks, bonds and notes were worthless; that the value of the residue of its securities, as well as the value of much of its real property, was uncertain; that no considerable portion of it assets could be speedily reduced to money for lack of a market value; and that the company was no longer in a condition to engage actively in the prosecution of the business which it had been organized to transact.
535 In view of this condition of affairs, existing at that time, the court concludes that it was impliedly understood and agreed by the persons then in control of the company, with possibly one or two exceptions, that further active operations should be suspended, at least for the time being;

that the Executive Committee and Board of Directors should thenceforth endeavor to reduce the corporate assets to cash and with the proceeds liquidate the company's debts so far as the proceeds would extend, and that they should not for the present accept new business or embark in any new ventures. The court is satisfied that this policy was in fact pursued in accordance with the implied understanding aforesaid until some time in May, 1900, or for at least four or five months.

2. The real grievance disclosed by the bill and affidavits consists in the fact that the defendant company during a period of years has persistently committed acts which must be regarded as in excess of its corporate powers, and by so doing has not only sustained grievous losses but has lost control of its capital, having been compelled to pledge or hypothecate the bulk of its available assets as security for loans, so that it is not at the present time in a condition to be dealt with safely, or to transact the business which its charter authorizes it to transact, with a reasonable prospect of success.

The proof shows with reasonable certainty that the officers and directors of the defendant company have made a practice of organizing other corporations to engage in various enterprises of a highly speculative character; that funds of the company to a large amount have been invested in the stocks and bonds of such concerns which had at the time no market value; that money in considerable sums has been loaned to such companies, sometimes upon their stock as collateral, and no other occasions without any security; that some of these enterprises have proved absolute failures; and that the money invested therein has been wholly lost, while other of such enterprises are in a precarious condition and the outcome thereof is doubtful and uncertain. The fact that
536 officers directors and employees of the trust company have generally served as officers and directors of such subsidiary companies and have held stock therein, leads the court to conclude that the moneys of the trust company would not have been used to purchase the stock and bonds of such concerns and to supply them with capital, except on the theory that they were mere adjuncts of the trust company and that the enterprises which it thus attempted to foster by the means aforesaid were its own adventures.

Moreover, in some cases, if not in all, there appears to have been such identity in the personal of the governing bodies of these corporations and the governing body of the trust company that it is impossible to believe that the interests of

either were fairly considered or properly guarded in any of the transactions and dealings which occurred between them.

In addition to the acts aforesaid, the proof shows that the defendant company has made large investments in real property apparently without a shadow of authority under its charter. Some of these investments may have been and probably were, profitable, but other investments of that kind will doubtless occasion a loss, and in any event such unauthorized investments have resulted in looking up much of the company's available means and have impaired its usefulness.

Furthermore, the court entertains no doubt that the defendant company has paid one, and probably several dividends out of its general funds that were not earned, such payments being made for the purpose of allaying suspicion as to the condition of the company and creating a false impression that it was in a prosperous condition.

Under the Missouri Statute relating to trust companies the primary function of a trust company, as the name implies, is to execute trusts of all kinds and descriptions according to the rules which govern ordinary trustees, and to act as agent for the management, conservation and control of all property, real or personal, which may at any time be committed to its custody, whether the owner be a natural or artificial person. When properly conducted such companies perform important and necessary functions in the business world which cannot as well be performed either by private individuals or co-partnerships. They have authority to receive money in trust from their customers and to accumulate it by loaning the same upon real estate or good collateral security. They also have power to issue debentures, provided they are secured by a pledge of mortgages or other securities which the company owns. But it was never intended that a trust company should go into the market as a borrower of money in large sums on its own notes to be employed in speculative ventures, as the defendant company appears to have done. The law contemplates that the business of such companies shall consist of loaning its own money or that of its customers on safe securities—not that it shall consist in borrowing money on its own notes in aid of doubtful enterprises, thereby imperiling its own solvency and disabling it from serving the public faithfully in its capacity as a trustee. Insofar as such companies are authorized to buy and sell stocks, bonds and other negotiable securities the power is limited by fair intendment by the language of the act to transactions in 'investment securities', which term

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must be understood to mean such securities as persons of ordinary prudence and capacity would purchase for the purpose of investment. Securities of the latter kind would ordinarily be those whose value can be ascertained with reasonable certainty and is not wholly dependent upon contingencies. It is doubtless true that when acting in the capacity of agent for another and pursuant to his instructions, a trust company can buy or sell for such other persons any kind of stocks or other negotiable securities as the customer may direct, but when making an investment of its own funds, or funds held in trust, or committed to it for accumulation and investment in its discretion, the law by necessary inference places restrictions upon the class of securities that may be bought or taken in pledge as collateral. As at present
538 advised, the court is of the opinion that the act creating trust companies does not authorize the acquisition of securities by such companies either as an investment or as collateral for loans, unless they have an ascertainable market value and may be properly termed 'investment securities'. If the value of a stock is purely hypothetical and speculative, a trust company should not acquire it for either of the purposes last indicated. Owing to the functions which trust companies are intended to perform, the public has a vital interest in their solvency and in confining them strictly to the transaction of such business as the act authorizes. It was never intended that such companies should engage in the business of promoting hazardous and highly speculative enterprises, either by the acquisition of large blocks of stocks or bonds, or by loaning large sums of money, to companies or corporations engaged in such enterprises. It is well known that by so doing a trust company speedily becomes the real power behind such enterprises and often times finds that its own solvency depends upon the success or failure of subsidiary companies in whose securities it has made large and improvident investments. Several notable examples might be cited in this circuit where a line of policy such as has apparently been pursued by the defendant company has led to wide-spread disaster and great public distress and inconvenience.

In accordance with these views the court is constrained to conclude that the bill and affidavits disclose many ultra vires acts committed by the defendant company during the past five years; and that these acts have not only led to the dissipation of its assets and to its present embarrassment, but have rendered it unsafe for the company to continue the further transaction of its customary business until it has realized upon some of its assets and liquidated its present indebtedness.

3. With reference to the two suggestions made on the argument of the motion that the bill of complaint does not set out specifically the commission of any such ultra
539 vires acts as are heretofore mentioned, and if it does, that they are past transactions of the company of which the complainants were duly advised before they became stockholders, and for that reason cannot be heard at this time to complain—the court entertains the following views: First. That the ultra vires acts referred to above are generally alleged in the fourth and fifth paragraphs of the bill and are made sufficiently specific by the affidavits now on file which have been produced both by the defendant company and by the complainants. But if this position is not tenable, in view of the present status of the litigation and the time already devoted to it and to an investigation of the company's affairs, the court would deem it its duty to permit any defect in the existing allegations of the bill to be remedied by amendment; and second, as respects the suggestion that the complainants bought their stock with knowledge of the past acts of the company and are not entitled to complain, the court entertains the view that while the complainants did know of the character of many of the trust company's investments, yet they were doubtless mistaken as to their value, and the court is unable to say that the complainants were acquainted with all of the facts and circumstances which rendered the investments unauthorized and wrongful. It is not deemed probable, and it is not proven, that the complainants had such knowledge in details of all the precedent acts of the company at the time they purchased its stock as should now preclude them from making complaint or exercising the ordinary rights of shareholders. They were not themselves concerned in any of the unauthorized acts of the company which are now called in question and most likely bought without investigating the transactions in detail.

4. For the reasons thus briefly outlined the court has reached the conclusion that it is its duty under the law for the adequate protection of all interests to place the assets of the trust company in the custody of a competent re-
540 ceiver until a final decree shall be rendered, or until some arrangement shall be made among the shareholders which will enable the company to resume its business with adequate capital and conduct it on proper lines. Pending the receivership stockholders will be allowed to convene and elect directors and the receiver will be instructed in the managament and disposition of the assets of the company to conform to such requests preferred by the directors

in meeting duly assembled as commend themselves to his judgment as being steps proper to be taken in the interest of creditors and the majority of the shareholders."

Mr. Smith: May I go back to the preceding piece of evidence, simply to identify this document, the petition in the Grannis case which I offered, is contained in the files of this court, in the District Court, in case number 2335, Charles E. Grannis, et al., vs. Kansas City, Pittsburg & Gulf Railroad Company, et al.

Mr. Rosenberger: We make objection to all of these documents that are now being offered in the examination of this witness as encumbering the record and creating an unnecessary expense in this inquiry.

The Master: Your objections have been sustained.

Mr. Rosenberger: I merely do that as an additional ground of objection.

The Master: Yes.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Mr. Smith: I offer in the same connection the opinion of Judge Thayer, filed on October 1, 1901, in the same Bierce case.

The Master: Hadn't you better give the number of that case?

Mr. Smith: Yes, Number 2483; on the application of the Guardian Trust Company to file certain answers by petition in the Provident Life & Trust Company cases.

541 Mr. Rosenberger: I object to that as absolutely outside the issues in this case under the order appointing the Special Master; and for all the reasons heretofore given.

The Master: The objection is sustained.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

The opinion of Judge Thayer so offered in evidence, being Kansas City Southern Railway Company's Exhibit 3 is in words and figures as follows:

"In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

W. W. Bierce, et al., Complainants,

vs.

The Guardian Trust Company, Defendant.

Memoranda.

Thayer, Circuit Judge.

The Provident Life & Trust Company of Philadelphia, as trustee, in four mortgages on certain terminal railroad properties in Kansas City, Missouri, has filed four suits in this court to foreclose the same, being cases Nos. 2464, 2465, 2466 and 2467. The mortgaged terminal properties belong to a corporation known as the Kansas City Suburban Belt Railroad Company, hereafter referred to as the Suburban Belt Company, the same having been acquired by the latter company from the various companies which originally owned them. The bulk of the bonds secured by the mortgages on the terminal properties aforesaid, are now held by the Mercantile Trust Company of New York as pledges, to secure the bonds of the Kansas City Southern Railway Company. Prior to the hypothecation of the bonds with the Mercantile Trust Company, the Kansas City Southern Railway Company had acquired the same by an exchange of its own securities, such as bonds and stock, both common and preferred, in accordance with a plan which had bene formulated to reorganize the Kansas City, Pittsburg & Gulf Rail-
542 road under and in pursuance of which plan of reorganization the Kansas City Southern Railway Company came into existence. This plan of reorganization, without going into too much detail, contemplated that the Kansas City Southern Railway Company, hereafter referred to for brevity as the Southern Railway Company, when organized, should acquire not only the railroad of the Kansas City, Pittsburg & Gulf Railroad Company, but also the various terminal properties above mentioned then owned and operated by the Suburban Belt Company, and that they should become an integral part of its road. The reorganization scheme aforesaid has been carried into execution so far that the Southern Railway Company has been duly organized for about eighteen months and has issued a large amount of its own bonds and stock both common and preferred. It purchased the Kansas City, Pittsburg & Gulf Railroad, which it was organized to purchase, and has operated it continuously since the purchase. As owner of all the stock of the Suburb-

an Belt Company, and as owner of a great majority of the bonds previously issued by that company and its constituent companies, which are secured by the mortgages on the terminal properties aforesaid, it took possession of the terminal properties shortly after its organization and has continued to operate them for about eighteen months.

In the actions which have been brought by the Provident Life & Trust Company, as trustee, to foreclose the mortgages on the several terminal properties, which actions were commenced on September 6, 1900, it was alleged by the complainant in certain supplemental bills filed in those cases, that the Guardian Trust Company, one of the original trustees in the terminal mortgages, had been removed as trustee in the mode provided by the several mortgages and that it desired to make the Guardian Trust Company a defendant in the several foreclosure suits for the purpose of having this fact established by judicial decree. The latter company was accordingly made a defendant to those suits, and on November 5, 1900, it filed an answer. Recently the receiver of the
543 Guardian Trust Company, who was appointed by this court in the above entitled case (Bierce vs. Guardian Trust Company) on November 30, 1900, has prepared a supplemental answer which he desires to file in the several foreclosure cases. On the presentation of the proposed supplemental answer attorneys representing the Provident Life & Trust Company appeared and objected to its being filed, and in that connection requested the court to direct its receiver to withdraw his opposition to the suits for the foreclosure of the underlying mortgages on the terminal property.

For the purpose of determining whether the receiver ought to engage as an active litigant in the defense of the foreclosure cases and make the proposed defenses or suffer decrees to be entered therein with such reservations as will protect the interests committed to his charge, the defenses which the receiver desires to interpose have been examined and an informal discussion has taken place concerning their merits. This discussion was not had with a view of deciding as upon demurrer or exception to the answer whether the defenses are good and sufficient in point of law, but for the single purpose of ascertaining, in view of all of the existing circumstances, what directions ought to be given by the court to its receiver relative to interposing them. The receiver's interest in preventing the entry of decrees in the foreclosure cases consists of the fact that as receiver of the Guardian Trust Company he has a large unsecured claim against the

Suburban Belt Company, the collection of which, as he fears, may be prejudiced if its equity of redemption in the terminal properties is foreclosed. This claim has not as yet been reduced to a judgment and is disputed, but it must be assumed for present purposes that the Suburban Belt Company is indebted in a very considerable sum to the Guardian Trust Company.

After examining the proposed answers and listening to the discussion which has taken place, the court is satisfied that the mortgages on the terminal properties have never
544 been paid or otherwise cancelled or discharged. The reorganization plan clearly contemplated that the bonds of the various terminal roads should not be immediately paid or cancelled but that the lien of the mortgages on such properties should be preserved and continued in force to secure the payment of the mortgage bonds until such time as actions were brought to foreclose the liens in the ordinary manner. Until such foreclosure proceedings were inaugurated, the bonds of the terminal companies which were to become the property of the Southern Railway Company by an exchange of its own securities were to be pledged, as they were subsequently pledged, to secure the bonds of the latter company. The court has no reason to doubt, therefore, that the mortgages on the terminal properties secure a valid existing indebtedness to the amount of the bonds and that a large amount of interest which has accumulated on the indebtedness is now in arrear.

It is suggested in behalf of the receiver that in view of the allegations contained in the original and in the proposed supplemental answer to the bill of foreclosure, the reorganization scheme as formulated and carried out resulted merely in the consolidation of the Suburban Belt Company with the Kansas City, Pittsburg & Gulf Railroad Company, under the name of the Kansas City & Southern Railway Company, and that the latter company is liable for all the debts, both secured and unsecured, of the constituent companies. No sufficient reason, however, is shown injecting such an issue into the foreclosure suits, nor is it regarded as a proper issue to be tried and determined in those actions. If the theory in question is sound, it should be tried and determined in an action brought for that purpose after the receiver's demand is reduced to a judgment. Until then the issue is important and can be left undetermined without harm to anybody.

Another suggestion is, that by virtue of the reorganization scheme the stockholders of the Suburban Belt Company have

participated in a disposition of its property and have derived an advantage therefrom in fraud of the rights of its general creditors. Concerning this suggestion, it may be said that by the exchange of their stock for the stock of the Southern Rail-
way Company, an exchange which was long since ef-
545 fected, the stockholders of the Suburban Belt Company have already derived all the benefit and advantage which the reorganization scheme was intended to afford them. To the extent that the stockholders may have derived a benefit or advantage in the course of that transaction in fraud of the rights of creditors, they can doubtless be called to account in a proper proceeding when the claim of the Guardian Trust Company is reduced to judgment. It is probable, however, if not certain, that the Trust Company, as a shareholder in the Suburban Belt Company, shared largely in this advantage, whatever it may have been, and is not in a position to complain. At all events, an accounting as respects the profits, if any, that were realized by the stockholders in that transaction, cannot be tolerated in the pending actions to foreclose the terminal mortgages. The stockholders of the Suburban Belt Company cannot be charged as constructive trustees of a part of the company's assets in the foreclosure suits because they are not parties thereto and because the claim of the Trust Company is not yet definitely ascertained. Moreover, such a controversy is not germane to suits to foreclose valid existing mortgages on the terminal properties.

The principal allegation made by and in behalf of the receiver, and the one on which he principally relies, is, in substance, that the several foreclosure suits now pending were brought by collusion between the complainant and the Suburban Belt Company for the sinister purpose of foreclosing the equity of redemption in the terminal properties and by that means placing it beyond the reach of the general creditors of the Suburban Belt Company.

It was admitted at the hearing that the mortgages on the terminal properties were executed originally in good faith to secure a valid indebtedness contracted by the several companies which executed the mortgages, and as before stated, there appears to be no reason to doubt that these mortgages secure present subsisting debts. Under these circumstances
it is somewhat difficult to perceive in what way the
546 foreclosure suits can operate as a fraud upon anyone. Every foreclosure suit necessarily has the effect of destroying the equity of redemption in the mortgaged property and of placing it beyond the reach of the mortgagor's unse-

cured creditors unless they elect to buy the equity at the foreclosure sale. The most that can fairly be said of the answer which the receiver seeks to interpose is, that it shows that these foreclosure suits are merely isolated steps taken in the execution of a reorganization scheme that was substantially executed more than a year since, which scheme is detrimental to the interests of unsecured creditors of the Suburban Belt Company. But, as already suggested, it is most probable, if not certain, that the Guardian Trust Company, prior to the appointment of the receiver, was one of the active participants in the reorganization scheme and derived large benefits therefrom which it retains and proposes to retain.

The court does not desire its receiver to embark in unnecessary and futile litigation but merely to take such action as is deemed necessary to fully protect the interests committed to his charge. It is the opinion of the court, in view of all the circumstances above mentioned, that it is unnecessary to interpose such defenses to the foreclosure suits as the receiver proposes to interpose and that the interests committed to his charge can be fully guarded and protected in other ways. The receiver will accordingly be directed to withhold filing the supplemental answer which he proposes to file and to withdraw the answer already on file in the several foreclosure suits, in the event that the complainant will enter into a stipulation with the receiver to the effect that in the decree of foreclosure which shall hereafter be entered in the respective cases a provision shall be inserted to the effect that the foreclosure sale under the decree shall not bar the right of the Guardian Trust Company, or its receiver, to insist in any action now pending hereafter brought to which it may be a party, that it has a lien, claim or demand against the mortgaged property which is superior at law or in equity to
547 the lien of the mortgage which is undergoing foreclosure, and that the mortgaged property may be taken and subjected to the payment of any such superior lien, claim or demand when duly established, in any court of competent jurisdiction, from the possession of the purchaser or purchasers at said foreclosure sale, or his or their successors or assigns.

The receiver will, as a matter of course, be permitted to interpose an answer denying that the Guardian Trust Company was lawfully removed as trustee and denying the existence of a mortgage indebtedness, or the amount thereof, or that a default has accrued under the mortgage, provided he is satisfied for any reason that such defenses should be interposed."

Mr. Smith: I offer in evidence, in support of our objections, certain items in the account of the final decree in the Provident Life & Trust Company foreclosure cases filed November 6, 1901, and the order confirming the sale and fixing the form of deed in the same cases, filed January 3, 1902. I am just offering these for the purpose of showing those foreclosure cases went to final judgment.

Mr. Rosenberger: Subject to all of the objections which I have made to the competency and relevancy of these vouchers, I can stipulate that the Provident foreclosure cases all ripened into final decree of sale, entered November 6, 1901, and a confirmation of that sale, entered January 3, 1902, and a conveyance of all property mentioned in the foreclosure bills to the Kansas City Southern Railway Company.

Mr. Smith: This goes to the items which have to do with the attorney fees rendered in reference to the Provident cases, particularly the Trimble & Braley items, and the judgment in the Trimble & Braley case. It is claimed here that Mr. Trimble received $4500.00 for filing answers in those cases and it is our contention that since those cases have gone to final judgment and been disposed of, you cannot tax the costs of this case for costs incurred in those cases.

548 Mr. Rosenberger: Even though services were rendered for the Guardian Trust Company in connection with this Cambria debt?

Mr. Smith: Even though some services were rendered for the Guardian Trust Company.

I want to offer certain parts of the argument made by Mr. Mecartney before Judge McPherson in the Cambria case. This is on the good faith issue.

Mr. Rosenberger: That is objected to for the reasons heretofore given. This is an attempt merely to reagitate issues already determined by the Appellate Courts. I further object to mere fractions of the record. If he is offering the entire document, that is one thing; to offer mere snatches of something here and of something somewhere else, I object to as incompetent.

The foregoing objections were, by the Master, sustained, to which ruling the Kansas City Southern Railway Company and the Cambria Steel Company duly excepted.

Mr. Smith: I want to get it in the record. Mr. Mecartney in arguing to the court the question of the intervening petition of the Southern Company and the Trust Company's answer thereto, used the following language: "It is not an affirmative claim on our part of a personal liability—we could not get a judgment on it. But as the pleadings stand, we are not seeking a personal judgment against the Southern Company. In that case, the Southern Company is a mere intervenor."

"The next suggestion is, this Cambria Steel Company case was the ordinary judgment—in most respects, most features, was an ordinary judgment creditors' bill that is usually filed simultaneously with the bill to foreclose a railroad. The foreclosure bill is filed and receivers appointed under the powers in the mortgage. Those receivers, however, have merely restrictive duties. Such cases as that usually prompt the commencement of creditors' bills, attachments and one thing and another, so it is usually the practice to get some creditor to file a creditors' bill and have receiv-
549 ers appointed, which avoids conflicts of jurisdiction between the United States Court and the foreign jurisdiction of a state court. So the two generally move along together—as your Honor knows from experience—the foreclosure proceeding is consummated, those receivers discharged in the foreclosure suit and general receivers continue on to wind it up."

Mr. Smith: I offer in evidence the Mandate filed in this case in the District Court on June 21, 1909, being the mandate reversing the judgment of the second injunction and included in this the statement of the costs taxed in favor of the appellant; also the certificate of the Clerk of the United States Circuit Court of Appeals, stating the amount of costs taxed in the appeal of the Central Improvement Company vs. Cambria Steel Company, No. 3489, filed in the District Court on April 30, 1917; also the certificate of the Clerk of the Court of Appeals in case No. 3490, in said court, entitled, Guardian Trust Company vs. Cambria Steel Company, showing the costs taxed in said court, being filed in the District Court, on April 30, 1917, the last two documents being the certificates of the Clerk of the Court of Appeals as to costs taxed on appeal from the second injunction. I also offer in evidence the mandate of the Supreme Court of the United States on appeal from the final decree of June 25, 1910 in this cause, this mandate being the affirmance of the decree of the court of appeals and remanding the case to the District Court. I

want to include in that offer, the statement of costs contained on the mandate.

The documentary evidence offered on this page is hereinafter covered by an agreement of counsel.

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550 HARRY D. FORD, called as a witness on behalf of the Kansas City Southern Railway Company and the Cambria Steel Company, having first been duly sworn, testified in substance as follows:

My name is Harry Ford. I am Clerk in the legal department of the Kansas City Southern Railway Company. I made a check of the dates on which evidence was taken and the hours at which the taking began from the transcript of the evidence in the Cambria Steel Company cases between January 15, 1903 and December 20, 1904, and as to the number of pages of the exhibits attached by S. B. Willey, as a witness. I have prepared a statement as a result of that check. The testimony was taken on forty-three days from January 15, 1903 to December 20, 1904. On fifty-five days there were appearances and nothing done but postponing the hearings to another date. Mr. Willey testified as a witness on twenty-five days between January 15, 1903 and December 20, 1904. After December 20, 1904, Mr. Willey testified on one five or six days. One Thousand three hundred and nine pages of the record were covered by Mr. Willey's exhibits. Of that number, there were four hundred sixty-six pages of printed forms of vouchers and attachments, leaving a balance of eight hundred forty-three pages of other exhibits.

Mr. Smith: I offer in evidence this statement as compiled by Mr. Ford showing the number of hearings and ask that it be marked Exhibit "C".

Mr. Rosenberger: I object to that as having no probative value, as the witness is not shown to have any qualifications to examine a record of this sort in a case of this kind; don't know what he is talking about.

The Master: The objection will be overruled.

To which last action and ruling of the Master, the Guardian Trust Company, by its counsel, at the time duly excepted.

Said statement last above received in evidence by the Master, is here marked by the Reporter: "K. C. So. Ry.

Co.'s Ex. "C" G. P. 2/6/24", and the same is in words
551 and figures as follows, to-wit:

Kansas City Southern Railway Company's Exhibit "C"

"For the period from Jan. 15, 1903 to December 20, 1904.

1 day Reading of the pleadings.

1 day Request for certain information to be furnished by Mr. Willey.

1 day Vouchers offered by Mr. Lucas.

1 day Request that night sessions be discontinued.

1 day Order of the Master.

43 days Testimony taken.

55 days Postponements, no evidence taken or hearings had."

Mr. Smith: What is the statement represented by Exhibit "D"?

Mr. Ford: A statement of pages covered by exhibits offered by Mr. Willey.

Mr. Smith: What is the statement represented by Exhibit "E"?

Mr. Ford: A statement showing when Mr. Willey appeared as a witness, as shown in the numbered volumes of the record.

Mr. Smith thereupon offered in evidence Kansas Southern Railway Company's exhibits "D" and "E" in words and figures as follows:

Kansas City Southern Railway Company's Exhibit "D"

"Statement Of Pages Covered By Exhibits Offered
By Mr. Willey
Record Volume No. 1,

January 30, 1903, 10 A. M.
Testimony page 5 to 276.

Exhibit	Pages	
1	10-18	9 pages
2	21-23	3 "
3	26-29	4 "
4	34-36	3 "
5	38-137	100 "

5A	138–138	1	"
6	141–163	23	"
7	168–183	14	"
8	183–191	9	"
9	193–195	3	"
10	197–203	7	"
11	206–211	6	"
11B	215–215	1	"
12	219–267	49	"
13	268–270	3	"

Volume 2

Exhibit	Pages	
1A	34	1 page

Volumes 11 & 12

	14	5677–5684	8 pages	printed
	15	5694–5705	12 "	
	16	5707–5710	4 "	
	17	5712–5712	1 "	
	18	5715–5721	7 "	
2 P. M.	19	(6109–6113	5 "	statement
		(6114–6134	20 "	vouchers
	20	5736–5736	1 "	"
	21	5737–5737	1 "	"
	22	5740–5740	1 "	"
	23	5741–5741	1 "	"
	24	5747–5747	1 "	"
	25	5750–5750	1 "	"
	26	5754–5782	29 "	
	26½	5795–5800	6 "	
A. M.	27	5803–5803	1 "	
	28	5807–5807	1 "	
	29	5810–5811	2 "	voucher and bill
	30	5812–5812	1 "	printed
	31	" "	1 "	"
	32	5813–5813	1 "	"
	33	5814–5814	1 "	
	34	5816–5816	1 "	
	35	5819–5819	1 "	voucher
	36	5820–5820	1 "	printed
	37	5823–5823	1 "	voucher
	38	5824–5825	2 "	voucher and letter
	39	5826–5826	1 "	printed
	40	5827–5827	1 "	"
	41	5858–5859	2 "	voucher and bill
	42	4405–4405	(Vol. 8) 1 page	voucher
	43	5872–5883	12 pages	
	44	(Same as Ex. 42)		(List of stockholders)
2:00 P. M.	45	5892–5892	1 "	(not in our copy
	46	(See 5896)		(of record.
	47	6155–6160	6 "	statement
	47A	6161–6199	39 "	vouchers and bills

	48	5904-5906	3	"	
	49	5916-5916	1	"	voucher
	50	5922-5929	8	"	
	51	5930-5982	53	"	
	52	5984-6035	51	"	
	53	6039-6039	1	"	
	54	6040-6047	7	"	
	55	6048-6097	49	"	
Oct. 6, 1903, 9:30 AM	19A	(6260-6266	6	"	statement
		(6265-6611	347	"	vouchers and bills
		(6615-6629	14	"	" " "
		(6633-6645	14	"	" " "
	56	6647-6650	4	"	
	57	6651-6654	4	"	
	58	6655-6658	4	"	
	59	6659-6659	1	"	

553

	Exhibit	Pages			
	60	6660-6661	2	pages	
	61	6662-6665	4	"	
	62	6666-6667	2	"	
	63	6668-6669	2	"	
	64	6670-6671	2	"	
	65	6672-6676	5	"	
	66	6677-6677	1	"	
			760		

Volume 13

Jan. 4, 1904, 2 P. M.	67	6762-6788	27	pages	
	68	6791-6798	8	"	
	69	6800-6803	4	"	
	70	6807-6810	4	"	
Jan. 15, 1904, 9:30 AM	70½	6863-6933	71	"	
	71	6935-6939	5	"	
	72	6940-6942	2	"	
	73	6942-6948	5	"	
	73½	6947-6951	5	"	
	73¾	6966-6997	32	"	
Jan. 27, 1904, 2 P. M.	74	7063-7064	2	"	voucher
	74½	7069-7069	1	"	
	75	7071-7071	1	"	
	76	7073-7075	3	"	
	77	7077-7077	1	"	
	78	7084-7087	4	"	
	79	7088-7089	2	"	
			177		

Volume 47

May 18, 1905 10 A. M.	80	28159(Vol. 37-19496-19555	60	pages	(15 page stmt. credited for 4
May 22, 1905 2:30 PM	81	28170-28185	16	"	pages each stmt.)
	82	28199-½)			

	83 ")			5 vouchers and attachments not shown in our copy of record.
	84 ")			
	85 ")			
	86 ")			
May 24, 1905 10 AM	87 28217-28218	1	"	
	88 28218-28220	2	"	
June 12, 1905, 2 P. M.	89 28288-28288	1	"	
	90 28289-28289	1	"	
	91 28318-28318	1	"	
	92 28318-28318	1	"	
June 14, 1905, 2 PM	93 28332-28332	1	"	
	94 28333-28334	1	"	
		85		

Volume 55

Nov. 7, 1905 10 AM	95 33543-33544	2	"	
	96 33549-33551	3	"	
	97 33551-33551	1	"	
	98 33558-33590	33	"	
	99 33596-33606	11	"	
	100 33619-½			This exhibit is not in our copy of the record, but is shown on pages 174 and 175 of MK&T Trust Co. stock and bond Ledger No. 1.
	101 33636-33637	2	"	
		52	"	
554				1309 pages including vouchers

There were 466 pages of printed forms, vouchers and attachments, which deducted from the total of 1309, leaves a balance of 843 pages of exhibits.

Kansas City Southern Railway Company's Exhibit "E"

Volume 1.

January 30, 1903	10:00 AM	pages 5	—	276

Volume 2.

March 6, 1903	7:30 PM	pages 277	—	314
March 14, 1903	2:00 PM	" 315	—	345
March 21, 1903	2:00 PM	" 347	—	376
March 25, 1903	1:30 PM	" 377	—	408
March 26, 1903	1:30 PM	" 408	—	417
March 30, 1903	1:30 PM	" 417	—	446
March 31, 1903	7:30 PM	" 446	—	465
April 1, 1903	7:30 PM	" 465	—	492
April 3, 1903	7:30 PM	" 493	—	501
April 16, 1903	7:30 PM	" 501	—	504

Volume 11

Sept. 21, 1903	9:00 AM	pages	5676	—	5721
Sept. 21, 1903	2:00 PM	"	5722	—	5793
Sept. 22, 1903	9:30 AM	"	5801	—	5889
Sept. 22, 1903	2:00 PM	"	5889	—	5902
Sept. 24, 1903	9:30 AM	"	5902	—	6098
Sept. 26, 1903	9:30 AM	"	6098	—	6106
Oct. 1, 1903	9:30 AM	"	6106	—	6215

Volume 12

Oct. 6, 1903	9:30 AM	pages	6216	—	6677

Volume 13.

Nov. 17, 1903	1:30 PM	page	6683	—	6735
Jan. 4, 1904	2:00 PM	"	6737	—	6813
Jan. 6, 1904	9:30 AM	"	6813	—	6842
Jan. 15, 1904	9:30 AM	"	6843	—	6954
Jan. 15, 1904	2:00 PM	"	6954	—	7017
Jan. 16, 1904	10:30 AM	"	7017	—	7029
Jan. 19, 1904	2:00 PM	"	7029	—	7057
Jan. 27, 1904	2:00 PM	"	7058	—	7095
Jan. 28, 1904	2:00 PM	"	7095	—	7112

Volume 47

May 18, 1905	10:00 AM	pages	28158	—	28167
May 22, 1905	2:30 PM	"	28168	—	28200
May 24, 1905	10:00 AM	"	28201	—	28234
June 12, 1905	2:00 PM	"	28285	—	28329
June 14, 1905	2:00 PM	"	28330	—	28360

Volume 55.

Nov. 7, 1905	10:00 AM	pages	33523	—	33639."

On cross-examination by Mr. Rosenberger, Mr. Ford testified in substance, as follows:

Mr. Rosenberger: I understand you, Mr. Ford, that when Mr. Smith asked you to make this search he furnished you with what somebody in his office had prepared, an abstract of the testimony and proceedings before Special Mas-
555 Douglass?

Mr. Ford: Yes, sir.

Mr. Smith: Mr. Rosenberger, may I correct that; it wasn't "somebody" in my office. That abstract was prepared by Mr. Marks originally.

Mr. Rosenberg: By one of the counsel for the Southern Company?

Mr. Smith: Yes, sir.

Mr. Rosenberger: That abstract didn't purport to be a copy of all of the proceedings and testimony, did it?

Mr. Ford: I didn't know.

Mr. Rosenberger: You don't know whether it did or not?

Mr. Ford: No, sir.

Mr. Rosenberger: And with that abstract before you if that abstract made reference to the fact in a certain volume and page there was testimony from Mr. Willey, why, you then went to the original transcript in the case in the United States Clerk's office to see whether it was there at that page?

Mr. Ford: No, sir.

Mr. Rosenberger: In other words, what I am getting at is, if the abstract furnished you said in a certain volume and page, Mr. Willey had given some testimony, didn't you go to the Master's transcript to see whether it was at that book and page?

Mr. Ford: It was in our copy.

Mr. Rosenberger: Oh, in your copy?

Mr. Ford: Our office copy.

Mr. Rosenberger: In your office copy?

Mr. Ford: Yes, sir.

Mr. Rosenberger: You didn't go to the Master's transcript for that purpose?

Mr. Ford: No.

Mr. Rosenberger: Now if the abstract that was furnished you, didn't give a page reference to Willey's testimony, did you go through the whole forty-nine or fifty volumes
556 of that testimony to see whether he testified anywhere else?

Mr. Ford: I took it from the front of the record, from the testimony itself.

Mr. Rosenberger: Only from the front of the record?

Mr. Ford: We checked it over, the abstract that I checked with the index in the front of the record.

Mr. Rosenberger: You only checked the index?

Mr. Ford: Yes.

Mr. Rosenberger: And if you didn't find it on the index, you didn't look any farther?

Mr. Ford: No, sir.

Mr. Rosenberger: You didn't look inside of the transcript?

Mr. Ford: I didn't check the pages where it was shown in the index.

Mr. Rosenberger: You didn't?

Mr. Ford: No, sir.

Mr. Rosenberger: And if it was shown there you didn't check any farther?

Mr. Ford: Yes, sir.

Mr. Rosenberger: Now there are how many volumes of that typewritten transcript, great many volumes of that typewritten transcript, are there not?

Mr. Ford: Yes, sir.

Mr. Rosenberger: How many?

Mr. Ford: Fifty-six to my knowledge.

Mr. Rosenberger: Fifty-six volumes?

Mr. Ford: Yes, sir.

Mr. Rosenberger: How many pages in all?

Mr. Ford: I could not say.

Mr. Rosenberger: You didn't notice to see the last page of the fifty-six volumes?

Mr. Ford: No, sir.

Mr. Rosenberger: And those fifty-six volumes are ex-
557 clusive of any testimony that was brought into that record by way of testimony in the Port Arthur Channel & Dock Company case?

Mr. Ford: I don't know.

Mr. Rosenberger: You don't know?

Mr. Ford: No, sir.

Mr. Rosenberger: Now I believe you said you are not an attorney?

Mr. Ford: No, sir.

Mr. Rosenberger: How old are you, Harry?

Mr. Ford: Twenty-three.

Mr. Rosenberger: I believe you said you had never studied law at all, sir?

Mr. Ford: No, sir.

Mr. Rosenberger: When you say that there were forty-three days on which testimony was taken, by testimony you mean that somebody is asking questions and somebody answers them?

Mr. Ford: Yes, sir.

Mr. Rosenberger: You didn't mean by that days of sessions before the Master where there were protracted arguments between counsel?

Mr. Ford: No, sir.

Mr. Rosenberger: Did you notice the number of sessions during the period about which Mr. Smith asked you, namely; from January 1, 1903 to December 20, 1904, at which there were night sessions before the Master?

Mr. Ford: I noticed, but I didn't make a statement.

Mr. Rosenberger: You noticed what?

Mr. Ford: There were night sessions.

The Master: Were the night sessions included, Mr. Ford? Did you include the night sessions?

Mr. Ford: Yes, sir.

Mr. Rosenberger: But when there was a night session you just included it as part of the days you speak of as forty-three days on which testimony was taken, whether it was night sessions or not?

Mr. Ford: May I ask you to read that question?

558 Mr. Rosenberger: What I mean, Harry, is this: if there was a session all day long and then a night session did you just treat it as one day of testimony?

Mr. Ford: Yes, sir.

Mr. Rosenberger: Then you made in addition to that, a statement as to the number of days which you found as days upon which no testimony was taken; I believe you said fifty-

five days on which the parties and witnesses appeared and adjournment was taken?

Mr. Ford: Yes, sir.

Mr. Rosenberger: Do you know how long a time was consumed on those days even though no testimony was taken?

Mr. Ford: No, sir.

Mr. Rosenberger: You noticed in that abstract that was given you that during that period up to December 20, 1904, there was a witness named H. B. Johnson on the stand for a long period of time, didn't you?

Mr. Ford: There was H. B. Johnson, but I could not say as to what period he was on the stand.

Mr. Rosenberger: Do you know Mr. Johnson?

Mr. Ford: No, sir.

Mr. Rosenberger: Did you know whether or not he was a former auditor of the Kansas City Southern, assistant to Mr. McCarty here and he testified as a witness in that case?

Mr. Ford: No, sir.

Mr. Rosenberger: You didn't examine the voluminous exhibits in the testimony that he gave and offered, did you?

Mr. Ford: No, sir.

Mr. Rosenberger: Now on those days during that period while Johnson was testifying did you find any note in the record as to how many days Mr. Willey was present during Mr. Johnson's testimony, while that testimony was going on?

Mr. Ford: No, sir.

559 Mr. Rosenberger: But you have not undertaken to testify as to the number of days when Willey was present and in attendance on hearings and at which he was not actually giving testimony himself?

Mr. Ford: No.

Mr. Rosenberger: How many volumes of testimony were taken before the Special Master prior to December 20, 1904?

Mr. Ford: I don't know.

Mr. Rosenberger: You don't know there were sixteen big typewritten volumes of testimony, besides exhibits, offered before the Master prior to December 20, 1904?

Mr. Ford: I knew there were some, but I didn't know how many.

On redirect examination by Mr. Smith, Mr. Ford testified, in substance, as follows:

Mr. Smith: You examined each volume of the testimony from number 1 and including one down to the end or down to December 20, 1904, did you not?

Mr. Ford: Yes, sir.

Mr. Smith: Now I will ask you to state whether or not at the front or at the beginning of each of those volumes of testimony there was an index showing the list of witnesses who testified in that volume?

Mr. Ford: Yes, sir.

Mr. Smith: How many witnesses were there that testified in that case, excluding Mr. Hastings, who was only there for a page or two at the very beginning; how many witnesses who testified in the case between January 15, 1903 and December 20, 1904?

Mr. Ford: Excluding Mr. Hastings?

Mr. Smith: Excluding Mr. Hastings.

Mr. Ford: Two.

Mr. Smith: Mr. Willey and Mr.—

Mr. Ford: Johnson.

Mr. Smith: So that is all of the testimony taken to December 20, 1904, except the page or two of Mr. Hastings' at
560 the beginning, consists of the testimony of Mr. Willey and Mr. Johnson and exhibits and vouchers filed?

Mr. Ford: Yes, sir.

Mr. Smith: Does it show where Mr. Willey's testimony begins, have you got the page here?

Mr. Ford: Yes, sir.

Mr. Smith: On what page does it begin?

Mr. Ford: Page 5.

Mr. Smith: Now these postponements that are spoken of in your tabulation, in making that list of postponements did you only count as a postponement those days on which they

met and adjourned without there being any showing or anything done at all?

Mr. Ford: Yes, sir.

Mr. Smith: Now Mr. Rosenberger has asked you if you know how many night sessions they had; does your list show the hour when the hearing began on each day of that forty-one days or forty-three days, whatever it is?

Mr. Ford: Only as far as Mr. Willey is concerned.

Mr. Smith: That is while he was testifying?

Mr. Ford: Yes, sir.

Mr. Smith: It shows the hours when the hearings began?

Mr. Ford: Yes, sir.

Mr. Smith: Each day there was a hearing and testimony taken of Mr. Willey?

Mr. Ford: Yes, sir.

Mr. Smith: I want to offer in evidence or have an understanding that so much of the proceedings in this case as are contained in the record in the Supreme Court of the United States in the Cambria case may be deemed a part of these proceedings so that they are before the Master and the Court. I offer the record in that case.

The Master: It will be admitted.

561 Mr. Smith: As to items 41, 42 and 43, it is agreed that on the appeal from the first injunction granted in the Provident Life & Trust Company cases, number 2464 et seq., in the District Court of the United States or Circuit Court the order of injunction was reversed by the Court of Appeals and the cause was remanded with the mandate of said court, on which mandate was a statement of the costs taxed in the Court of Appeals as follows:

Clerk,	$25.65;
Printing Record,	500.65;
Attorney,	20.00;
Total	$546.30

This mandate is dated May 31, 1906. The judgment in the Court of Appeals being in case Number 2329 in that court. There was added to the costs taxed in the Court of Appeals $339.70, costs taxed in the District Court for making the

transcript on said appeal, making a total of costs of account of said appeal $936.00. On April 23, 1907, the Kansas City Southern Railway Company paid to the clerk of the District Court or Circuit Court—whichever it may have been at that time—said sum of $936.00. The books of the clerk of the District Court or Circuit Court show that this sum of $936.00 was paid to the Guardian Trust Company, but Mr. Rosenberger states, as a fact, that the money was paid to the counsel for the Guardian Trust Company at that time.

As to Item 68; a supplemental bill was filed by the Kansas City Southern Railway Company in the Cambria case and an injunction was granted thereon, restraining the prosecution of certain cases in the state court. The Guardian Trust Company appealed from that order of injunction and the order of injunction was reversed by the Court of Appeals on June 21, 1909, and the cause remanded to the District Court. The mandate of the Court of Appeals shows that the costs were taxed in that court as follows:

Clerk,	$33.10
Printing Record,	979.50
Do. Addl.	13.85
Attorney	20.00
Total	$1046.45

The number of said case in the Court of Appeals was 2827. There was taxed in the Circuit Court as additional costs on account of said case the following amounts:

562	Costs of District Court,	$ 86.80
	Transcript Gdn. Tr. Co.	432.55
	E. R. Durham	2.00
	Gates, Sea & English, Attorneys	20.00
		$1587.80

On July 22, 1909, the Kansas City Southern Railway Company paid to the clerk of the District Court said sum of $1587.80. The books of the clerk show that there was paid to Gates, Sea & English, on August 4, 1909, $1499.00, which included the $20.00 attorney's fees taxed in the Court of Appeals and $20.00 attorney's fees taxed in the District Court.

Mr. Smith: Will you agree to what I have stated on Items 41, 42, 43 and 68?

Mr. Rosenberger: I will agree to that, but subject to my objection that in respect to items 41, 42 and 43 the amounts disbursed were charged by Mr. Mecartney against the Guardian Trust Company in his petition, in his suit against the company, and were adjudged in his favor; that his account was adjudicated to be correct. And I make the objection that what the Trust Company was adjudged to pay is conclusive here.

Mr. Smith: As to Items 71, 72 and 73, we offer in evidence the certificates of the clerk of the Court of Appeals showing the taxation of costs in that case.

Said certificates of the clerk of the United States Court of Appeals were received in evidence by the Master. Said certificates of the clerk are in words and figures as follows, to-wit:

"United States Circuit Court of Appeals, Eighth Circuit.

Central Improvement Company, et al., Appellants,
No. 3489 vs.
Cambria Steel Company, et al.

Appeal from the District Court of the United States for the Western District of Missouri.

I, John D. Jordan, Clerk of the above named court, do hereby certify that in the above named cause, the following items of costs were taxed in favor of Appellants in the
563 Circuit Court of Appeals and that if a mandate had been issued to the District Court herein, said items would have been entered thereon to be collected in the Court below for Appellants, viz:—

Clerk's costs,	$ 40.50
Cost of Printing Record,	877.90
Attorney's fee,	20.00
	$938.40

United States Circuit Court of Appeals, Eighth Circuit

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said court, at the City of St. Paul, Minnesota, this 22nd day of April, A. D. 1916.

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, for the Eighth Circuit.

"United States Circuit Court of Appeals, Eighth Circuit.

Guardian Trust Company, Appellant,
No. 3490 vs.
Cambria Steel Company, et al.

Appeal from the District Court of the United States for the Western District of Missouri.

I, John D. Jordan, Clerk of the above named Court, do hereby certify that in the above named cause, the following items of costs were taxed in favor of Appellant in the Circuit Court of Appeals, and that if a mandate had been issued thereon to be collected in the Court below for Appellant, viz:

Clerk's Costs,	$68.45
Record printed with that in No. 3489,	00.00
Attorney's fee,	20.00
	$88.45

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of said Court, at the City of St. Paul, Minnesota, this 22nd day of April, A. D. 1916.

United States Circuit Court of Appeals Eighth Circuit

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, for the Eighth Circuit.

Said certificate bears 10c cancelled revenue stamp on its face.

Mr. Smith: We also offer in evidence in reference to those costs the mandate of the Supreme Court of the United States which contains in it the judgment rendered by the
564 Court of Appeals on the appeal from the final decree of June 25, 1910.

Said mandate of the Supreme Court of the United States is received in evidence by the Master.

Said mandate of the Supreme Court of the United States is in words and figures, as follows, to-wit:

"United States of America—ss.

(Seal of the Supreme Court of the United States.)

The President of the United States of America, To the Honorable, the Judge of the District Court of the United States for the Western District of Missouri,—Greeting:

Whereas, lately in the United States Circuit Court of Appeals for the Eighth Circuit in causes beaween Central Improvement Company, H. H. Crittenden, Receiver of Central Improvement Company, appellants, and Cambria Steel Company, The Kansas ity Suburban Belt Railroad Compaany, Edward F. Swinney, as Receiver of the Kansas City Suburban Belt Railroad Company, The Kansas City Southern Railway Company and Guardian Trust Company, appellees, No. 3489; and Guardian Trust Company, appellant, and Cambria Steel Company, The Kansas City Suburban Belt Railroad Company, Edward F. Swinney as Receiver of the Kansas City Suburban Belt Railroad Company, The Kansas City Southern Railway Company, Central Improvement Company, and H. H. Crittenden, as Receiver of Central Improvement Company, appellees, No. 3490, wherein the decree of the said Circuit Court of Appeals, entered in said causes on the 2nd day of December, A. D. 1913, is in the following words, viz.

" 'These causes came on to be heard on the transcript of the record from the Circuit Court of the United States for the Western District of Missouri, and were argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said Circuit Court, in these causes be, and the same is hereby, reversed with costs; and that the Central Improvement Company, H. H. Crittenden, Receiver of Central Improvement Company, in case No. 3489, and the Guardian Trust
565 Company in No. 3490, have and recover against the Cambria Steel Company, The Kansas City Suburban Belt Railroad Company, Edward F. Swinney, as Receiver of the Kansas City Suburban Belt Railroad Company, and The Kansas City Southern Railway Company, their costs in this behalf expended in the respective cases to be taxed by the Clerk of this Court.

It is further ordered that these causes be, and the same are hereby remanded to the District Court of the United States for the Western District of Missouri, as the successor of the Circuit Court for said District, with directions to render a decree for the Trust Company in accordance with the views expressed in the opinion of this Court," as by the inspection of the transcript of the record of the said United States Circuit Court of Appeals which was brought into the Supreme Court of the United States by virtue of an appeal taken by The Kansas City Southern Railway Company, wherein Guardian Trust Company, Central Improvement Company,

Cambria Steel Company and Kansas City Suburban Belt Railroad Company were made the parties appellees, agreeably to the Act of Congress, in such case made and provided, fully and at large appears.

And Whereas, in the present term of October, in the year of our Lord, one thousand nine hundred and fifteen, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and was argued by counsel:

On Consideration Whereof, it is now ordered, adjudged and decreed by this Court that the decree of the said United States Circuit Court of Appeals in this cause be, and the same is hereby, affirmed with costs; and that the said Guardian Trust Company, Central Improvement Company, Cambria Steel Company and Kansas City Suburban Belt Railroad Company recover against the said The Kansas City Southern Railway Company, Twenty Dollars for their costs herein expended and have execution therefor.

And It Is Further Ordered, that this cause be, and the same is hereby, remanded to the District Court of the United States for the Western District of Missouri.

566 February 21, 1916.

"You, therefore, are hereby commanded that such execution and proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable Edward D. White, Chief Justice of the United States, the thirteenth day of April, in the year of our Lord one thousand Nine hundred and Sixteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Costs of Guardian Trust Co. et al.

Clerk	)	Paid
Printing Record	)	
Attorney		$20.00
		$20.00

File No. 24,092. Supreme Court of the United States, No. 85.

Mr. Smith: In support of our objections to Items 81 to 107, inclusive, and Item 127, the amounts paid Trimble & Braley, we offer in evidence the items in the account contained on page 108 and following of the record in the Trimble & Braley case, as set forth on pages 9 and 10 of our written objections.

Mr. Rosenberger: Why do you want to offer that when it is in evidence?

Mr. Smith: Is it in evidence?

Mr. Rosenberger: Yes.

Mr. Smith: Very well; let it be understood that these items are covered in the petition which is offered by Mr. Rosenberger in chief.

Mr. Rosenberger: In case in the state court number 2548, in cause of Trimble & Braley vs. The Guardian Trust Company.

Mr. Smith: Now on those same items, 81 to 107, inclusive, and on Item 127; and also Item 109, we offer in evidence the letter and statement of account of Mr. Wash Adams, appearing on pages 514 to 517 of the Trimble & Braley record.

Mr. Rosenberger: No objection.

567 Mr. Smith: I will read those to the Master. I am offering them for the dual purpose of showing such services included the Texas case; and also for the purpose of showing, in view of the other evidence that has been given, that Trimble & Braley were also devoting a considerable part of their time to that litigation.

Said letter and statement of account of Mr. Wash Adams are received in evidence by the Master, the same being in words and figures as follows, to-wit:

Kansas City, Missouri, June 10, 1904.

Guardian Trust Company,
Kansas City, Missouri.

Gentlemen:

I write this to request that you be kind enough to make me a payment on account of fees in the case of Cambria Steel Company et al. vs. Guardian Trust Company et al., E. F. Swinney and Stewart R. Knott, Receivers Suburban Belt Railroad Company vs. Guardian Trust Company, Ancillary Bill of Complaint for accounting, pending in the Federal

Court here and referred to Shannon C. Douglass, Special Master in Chancery, and the case of Provident Life & Trust Company, cross-bill, interventions and cross-bills of Provident Life & Trust Company, and Port Arthur Channel & Dock Company vs. Guardian Trust Company, et al., pending in the Federal Court at Beaumont, Texas. I have been actively engaged in these cases as counsel for the Guardian Trut Company for more than eighteen months, and have thus far received no fee. Some small advances on account of expenses is all I have yet received. I have participated in taking the testimony and am now taking part therein from time to time, prepared and filed pleadings, prepared briefs and argued questions of law arising on pleadings, and made several trips to Texas. The amount involved is large, and the result expected in the case pending in Texas is of vital importance to the Trust Company and stockholders. It is customary, as I am informed, for corporations in process of liquidation, to pay for services as they are rendered. I
568 suggest that a payment of $3,000 in each of the two cases, total retainer of $6,000, on account of fees would be reasonable.

Very truly yours,

WASH ADAMS

(Trimble & Braley Record, page 514).

The Guardian Trust Company
to
Wash Adams, Dr.

To services in suit Cambria Steel Company vs. Guardian Trust Company, et al., in the Circuit Court of the United States for the Western Division of the Western District of Missouri:

E. F. Swinney and Stuart R. Knott, Receivers Suburban Belt Railroad Company vs. Guardian Trust Company, Ancillary Bill of Complaint, referred to Shannon C. Douglass, Special Master, involving more than Four Hundred Thousand Dollars.

And in the suits Provident Life & Trust Company vs. Port Arthur Channel & Dock Company, et al.

And Barnett & Record Company vs. Port Arthur Channel & Dock Company; in Equity Nos. 10 and 11, Consolidated, in the Circuit Court of the United States for the Eastern District of Texas.

Guardian Trust Company vs. Port Arthur Channel & Dock Company, et al, Cross-bill.

Provident Life & Trust Company vs. Guardian Trust Company, et al, Cross-bill.

Port Arthur Channel & Dock Company vs. Guardian Trust Company, et al, Cross-bill; involving more than One Million Dollars.

Analysis of pleadings and preparing for trial.

Attendance at taking of testimony, some 8,000 pages, including exhibits. See Stenographer's statement hereto attached.

Investigating and collating authorities.

Many interviews and efforts at compromise.

Application to make Kansas City Southern Railway Company party to cross-bill of Guardian Trust Company in Federal Court for the Eastern District of Texas.

569 Brief and argument in support thereof.

Written objections filed in Federal Court in Texas to the granting of leave to the Provident Life & Trust Company to file cross-bill.

Written objections filed in the Federal Court in Texas to the granting of leave to the Port Arthur Channel & Dock Company to file Cross-bill.

Brief in support of these objections.

Oral argument before Judge Bryant, at Sherman, Texas, in support thereof.

Reply brief in support thereof.

Exceptions to the ruling on the objections.

Demurrer to the cross-bill of the Provident Life & Trust Company.

Demurrer to the cross-bill of the Port Arthur Channel & Dock Company.

Exceptions to the answer of the Port Arthur Channel & Dock Company.

Exceptions to the answer of the Provident Life & Trust Company.

Exceptions to the answer of the Port Arthur Channel & Dock Company.

Trip to Dallas, Texas, to get Judge McCormack of the United States Circuit Court of Appeals to sit with Judge Bryant at the hearing of these demurrers and exceptions.

Trip to San Antonio, Texas, to confer with Judge C. L. Bates.

Printed brief in support of the demurrers and exceptions.

Trip to Sherman, Texas, and oral argument in support of demurrers and exceptions.

Printed reply brief.

Trip to Beaumont, Texas, to hear decision and save exceptions.

Entry of order and exceptions thereto.

Getting of facts for answers.

Conferring with Associate Counsel and Officers and Employees of the Guardian Trust Company, and examination of records and documents.

Preparing replications to answers of Provident Life & Trust Company and Port Arthur Channel & Dock Company and Port Arthur Canal & Dock Company.

570 Preparing answer to cross-bill of Provident Life & Trust Company.

Preparing answer to cross-bill of Port Arthur Channel & Dock Company.

These answers were very long, involved the plan of reorganization, and required much consideration and study.

Filing answers and replications.

The services extended over a period of eighteen months or more. $10,000.00.

(Trimble & Braley Record 520).

The appellee offered in evidence certain parts of a report of Mr. Mecartney to the Guardian Trust Company dated October 23, 1905, but objection being made to admitting parts only, it then offered the whole and the same was received in evidence by the Master. Said report is as follows:

571 "Annual Report
to
Guardian Trust Company
By Harry S. Mecartney, Special Counsel,
October 23, 1905.

Barnard & Miller, Printers, Chicago.

Kansas City, October 23, 1905.

To the President and Directors, of the Guardian Trust Company.

Gentlemen:

Your acting president has requested me to make a report of matters under my charge in time for the coming annual meeting.

You understand that no regular counsel was elected by the directors or executive committee for the past year, and when the matter was brought up late in the fall, the writer suggested that there was no absolute occasion for such a salaried official; but that matters could be referred from time to time, as they arose, to counsel and he be paid for work as actually done. This suggestion was adopted; and the writer believes it a far better plan than the salary plan and conduces more toward prompt disposition of business and is more economical in the end.

Quite a number of matters, law suits and claims, independently of the Belt and Dock Company litigation, have been investigated and disposed of, and some half dozen legal opinions rendered upon matters of vital import. The total amounts paid the writer thus far, together with bills
572 presented at the end of this fiscal year have been less than $2,100.

I was at first reluctant to attempt to serve the company as to its general matters, fearing that the Belt litigation was enough for me to undertake. But with the help of competent assistants, I have been able to take care of them, with, as I hope, reasonable promptness.

As to matters pending and disposed of, I report:

1. The bill of Trimble & Braley for over $22,000, including interest.

Active and almost constant negotiations for a settlement of this bill extending over a period of eight or nine months resulted in an agreement of compromise between the claim-

ants and a majority of the executive committee on the basis of a payment to Messrs. Trimble & Braley of $9,000 in full settlement. The executive committee passed a resolution, adopting these terms, and against this there was lodged a protest by Mr. Prescott which was filed under the provisions of the order discharging the receiver.

This brought the matter up to the court to affirm or reject the compromise, and after argument it was rejected. In the meantime, Messrs. Trimble and Braley had brought suit in the state court and the matter stands referred to a referee, Mr. Ball, to take evidence.

2. The claims vs. The Northern Connecting Company.

These claims of the Guardian Trust Company, aggregating about $66,000 had been presented in an intervening petition which the trust company had filed in the foreclosure proceedings on said railroad. It was asserted that the same were preferential claims. Testimony had been taken and the matter was pending on a reference to Judge Douglass. The master, last spring, made an exceedingly long and exhaustive report of about 100 typewritten pages, in which these claims were rejected, except as to the amount of $1,161.50, which he allowed the Trust Company.

Other parties offered objections to his report, but he has never finally disposed of them. After investigat-
573 ing the matter the writer concluded, and so reported to the then president, that there was no prospect of having the report overruled and we did not prosecute the matter further.

3. The Missouri Railway Construction Company Debenture Bonds, Amount $53,433.17.

The writer went east in the summer time and retained counsel to make inquiries and collect data in regard to the assets of this concern. I, in the meantime, pursued my inquiries in Chicago and finally got track of the books, and I have been promised that they will be at my disposal for inspection within a very few days. If they do not turn up, I shall at once take procedings in court and examine under oath, the parties who were last in control of the company and who should know of its affairs.

4. The Texas suit at Beaumont, in which the Channel & Dock Company, set up a claim of stock liability for $1,500,000 against the Guardian Trust, and in which the Guardian Trust Company claimed about $30,000 as due from the Dock

Company, was compromised about the first of April last, as heretofore reported.

'The Benedict Zinc Case' in New York, was, as has likewas been reported, finally decided against the Trust Company and the judgment was satisfied.

The Quincy 'Zinc' Case at Kansas City was compromised.

The First National Bank Case at Kansas City was finally decided against the Trust Company and the judgment was paid. The amount, about $35,000, with interest, is a valid claim against the Kansas City Southern Company and the latter has been sued in the State Court therefor.

5. The Intervention Petitions in the Foreclosure Case of the Pittsburg and Gulf, involving claims for the services of counsel, rendered such Trust Company, as Trustee in the mortgages on the Texas and Louisiana part of the old Gulf System, were investigated and reported upon adversely by me last spring, and as a part of the terms of settlement
574 of the Texas litigation they were dismissed as to such items.

6. As to the claim of $22,000 of Coupons vs. The Gulf Road: I investigated this claim last spring. My associate, Mr. Histed, made me an exhaustive seven page report thereon, and after considering the matter thoroughly with him, I concluded that there was no prospect of recovery and I orally reported the same to the president and executive committee, expecting later to follow it up with a formal report, for which this report is now tendered.

7. Other claims. Set up by way of intervention in various proceedings, which are worthy of note are involved in the Belt accounting case and need not be here commented upon; and with the exception of those so involved the 'slate' has been practically cleared.

8. The Bierce Case. This is the case, as is well known, in which the receiver for the Guardian Trust Company was appointed.

Since the discharge of the receiver in 1902, practically nothing has been done therein, but the case still stands upon the docket undisposed of, and as one in which no final hearing has been had.

Lately Mr. Hagerman, counsel for the complainants, has been urging the writer to have the case disposed of.

To this general proposition, he readily assented, but differed radically from Mr. Hagerman in respect to the terms proposed. Those terms were:

1. That a decree be entered finding in effect that the original suit had been well brought but that since then the Trust Company had disposed of what has been called its 'ultra vires' assets, and that, therefore, no further proceedings were need[illegible]d, &c.

2. That the complainant's counsel be allowed by the court, a fee to be paid by the Trust Company, based upon the idea that the suit was brought in the interest of all stockholders and others, and had been for their benefit, &c.

I have lately looked over the bill and answer and Judge
575 Thayer's opinion rendered upon the appointment of the receiver, and examined the principal affidavits upon which the receiver was appointed. I have answered Mr. Hagerman that in my judgment, nothing but an absolute dismissal of the bill at the total costs of complainants would satisfy the demands of the situation.

My examination of the Bierce case records has prompted me to add some suggestions here which I deem to be not only a privilege but a duty. They bear directly upon the question of the disposal of the case and are worthy to be reckoned with at this time.

From the very first and briefest acquaintance with the history of this Trust Company, the writer was struck with the unique and unusual situation of a receiver having been appointed to administer the affairs of a private corporation, which after suffering all the burden of the receivership for several years and of several years more of voluntary practical liquidation, still had assets allowing for all claims against it and due it, equal in value to about three-fourths of its capital stock.

This naturally suggests at once a grave question as to whether the drastic judgment visited upon the company by placing a receiver over its assets was necessary or warranted, and whether the bill yet pending has or ever had any merit whatever.

It takes but little reading of these records to reveal to any unprejudiced mind that there was here committed a grave and terrible mistake.

A company which time has proven to have been thoroughly solvent is placed in the hands of a receiver for the purpose

of ridding itself of what the court and others concerned in the case called 'ultra vires' assets.

Its stock and assets are heavily depressed thereby, many of the assets are sold off at forced sale and at meager prices, and after several years of this expensive 'administration' of its affairs, its remaining assets are turned back to the company for it to pursue a so-called 'liquidation'.

576 The ordinary mind at once inquires why could not the company as easily have sold such assets as the receiver? Or why an order of decree in respect to liquidation by the company, such as was entered at the end of two years could not as well have been entered at the beginning of the two years, and why the heavy expense, and abnormal damage which always attends receiverships and which was as sure to follow as 'the night the day' could not thus have been saved?

When one then considers the fact, well known, that 'a falling out' had taken place between prominent factions in the management of the company, and that members of one of these factions were the complaining parties in the case, and that the public and the newspapers far and wide treated the case as 'fight for control' of the Trust Company, the conviction does not need to be invited that the 'preservation of the interests' of creditors and others was not the sole object in aiming and delivering a receivership blow against the Trust Company by some of its own corporate flesh and blood.

The Bierce Bill, in my judgment, is clearly bad upon its face.

All grievous errors are plain to even ordinary minds; and when one examines Judge Thayer's opinion, the considerations which impelled him to take the false step—an error which I am told he afterwards recognized—seem to plainly reveal themselves.

1. He failed to recognize the distinction between ultra vires investments—such as were beyond the power of the corporation to make—and investments that were simply injudicious. (The former in reality were but a small part of the assets of the company).

2. He did not recognize that if the company had through years of dealing accumulated a large amount of undesirable assets, it of necessity, had been done with the consent, express or tacit, of the stockholders themselves, who evidently had

been willing to profit thereby; and that stockholders, old or new, were not the proper parties to complain thereof.

577 3. He charged the Trust Company with being the sponsor and backer of various so-called 'speculative and subsidiary' companies—simply because some of its officers and agents had organized and officered them.

4. In not offsetting against the recognized sins in management of the Trust Company and the error of its having invested largely in 'speculative' securities, the fact that the company operated in a fast developing community.

Fast development comes pretty near speculation.

It was, in fact, a somewhat speculative community; and if only those trust companies, banks and other similar concerns had been labeled conservative which had no officers who were engaged in development companies and similar enterprises, there would probably have been very few in Kansas City summoned for the christening.

5. In not recognizing that the use of the courts for merely 'factional' purposes, had grown to be a common practice, and a momentous evil, and therefore demanding of the moving parties that they should bring forth a case verified with exceptional accuracy and of such a nature as would leave no suspicions of a double purpose in the move or a purely personal motive behind it; and as would imperatively demand the recording against the company of a judgment of receivership.

It is no doubt true that the Guardian Trust Company had not been managed as a conservative trust company like many that are found in older and more conservative cities, excepting, of course, New York.

But any financial or management sins or errors that had been committed by the trust company's agents did not warrant any one, much less its own stockholders, in soliciting a court to depress its assets by appointing a receiver and entailing heavy loss upon the company by a plea that the claims of others would be imperiled were the company to retain control of its own assets and realize upon them in the ordinary way, and avoid the certain sacrifice.

Judge Thayer was able, but old. It had become customary for courts to be used for private and personal attacks
578 by one corporation upon another and by one faction of a corporation upon another. And, behind the mass of confusing affidavits and the [clanor], he undoubtedly failed

to allow for the probable animus which prompted the filing of the bill and detect the personal interest, which cropped out from between the lines.

The responsibility for throwing one of the large corporations of the community in to the mesh and maze of receivership and the heavy loss thereby occasioned is chargeable more to the complainants and their counsel and to the practice prevalent then, and prevalent now—and which the courts and community are only beginning to recognize—of using public agecies for private and personal purposes.

The consequences of such a proceeding are so damaging and disastrous that parties instituting them must show a clear right, both legal and equitable, as well as a legitimate object therefor, to escape just condemnation at the hands of all the parties interested, and even at the hands of the community itself.

In such cases the party invoking such drastic measures must be right; and he must consider the widespread loss and distress that will be occasioned by the act and the responsibility that attends it. There is no more excuse for such an act ruthlessly committed than there is for a wanton and unnecessary surgical operation.

And when the community begins to demand rigorous honesty and fairness in its public and semi-public affairs such wanton and waste-entailing proceedings as the Bierce case will become few and far between.

It may be considered by some, at first blush, that it is late in the day to make these suggestions in this case; but I think that the Guardian Trust Company owes it to Kansas City and its many people directly interested, and especially to the parties who instigated these proceedings, to take the formal record of an impartial court as to whether or not this bill was rightly brought, and in case it was not, to have the responsibility therefor placed where it belongs. If this be done, it will give an opportunity for complainants and their
579 counsel in the case to formally acknowledge their error and to make such reparation as real men and upright citizens make for grave errors and misdeeds; or else to have a grievous wrong committed permanently recorded against them.

9. The Claims against the Belt Company and Kansas City Southern.

The merits of the Guardian Trust Company's claims against the Belt Railroad were reported upon exhaustively, after the writer's investigation made near the close of last year.

A second printed report of progress was given to the executive committee in May; and a month or two ago, a further report was made. Since the writer and his local counsel, Mr. Rosenberger—who has faithfully assisted him in a thoroughly satisfactory manner and whose only fault has been a too assiduous attention to the work—took hold of the matter at the beginning of the year a series of new claims set up in the case in an intervening petition filed by the Southern Company, to which we drew answers. An exhaustive amended bill was filed of over 100 printed pages, to which we filed answers of over 100 pages; we commenced a new suit against the Southern Company in the state court, which as we expected, was enjoined by Judge Phillips. We have perfected our record for the Court of Appeals and it has been already filed and the case has been set for argument January 11th next.

We have attended the taking of the evidence by the opposition which, in spite of our formal protests and appeals made in open court and various motions, etc., and objections made and filed has more than doubled in volume, making, as I believe, the longest record ever made in the history of an American court, if not in all history.

We have prepared and put in our own evidence, amounting to about 2500 pages, or about one-tenth of the record of the opposition and we have yet to put in but one days' evidence, to be given by Mr. Willey, after which and the usual tedious cross-examinations, we shall close our proof. The matter will then be ready for argument and the master's report:

580 While the evidence has not been concluded within the time prophesied by the writer last winter, he has attempted to follow the plan outlined by him in his report, and we believe it has been followed. My local counsel has given almost all of his time, and I have given the greater part of mine and also used for special investigation and reports the services of several of my Chicago associates.

I having completed a most exhaustive study and brief upon the question of the liability of the Southern Railroad for such claims as we shall ultimately establish against the Belt.

I have looked up and prepared memo briefs on all important questions which we can anticipate will come up before

the master in the accounting case. I prepared a printed brief, almost complete, upon the merits of the accounting case. The brief for the Court of Appeals on the injunction matter is nearly completed. The abstract of the evidence given in the long accounting case has been completed to the extent of over two-thirds of the testimony.

Thus I have endeavored to anticipate issues to be met in the case so far as it is profitable to do the work in advance, and when the evidence is finished, we will be ready for a prompt argument before the Master and to make our appeal for a prompt report.

I need not here repeat to any great extent my suggestions in respect to this accounting case. The claims of the Guardian Trust Company are valid against the Belt, and substantially in full. They now amount to about $525,000, inculding interest, and the annual interest is over $22,000.

The conditions which have surrounded this case, and which are directly responsible for the making of this abnormal record are well known to all local parties actively interested in the Trust Company's affairs. Suffice it to say that I have endeavored to openly and frankly and courageously fight these conditions and I am ready to keep on doing so and to make such moves, radical or otherwise, as may be necessary
581 to bring this disgracefully long record to a close and have an impartial hearing at the close.

The responsibility for it and the cause of it we can not, however, place until the end. Then I propose to earnestly seek to get for the Trust Company, not only its claims, and its interest, and the cost of expert fees and other witness fees, but also a great portion, and I believe the major portion, of any law fees which the company has incurred. The memo brief upon this latter portion I have also already prepared.

It makes no difference on what 'theory' the claims of the Guardian Trust Company have been resisted and this record of bewildering length made in the face of its protest, but I believe if the Trust Company 'stays by' this matter to the end, there will be a reckoning as will do it substantial justice.

[It] believe further that it is the simple duty of the Trust Company to itself and to the community in which it has operated, not to allow this tiring out process to win.

We have suffered much; but the record of it all will be fuel to the flame of righteous indignation which any impartial judge who may ultimately hear the case will not desire to

repress; and I doubt not but that justice, and full justice so far as courts can give it, will ultimately be our portion.

I now, therefore, suggest that notwithstanding we hope that the accounting case is nearing an end, and notwithstanding all efforts will be constantly and assiduously put forth to bring it to an end and to ultimately realize upon its suit against the Southern Company, nevertheless the adverse currents that have set against the company are so steady and possibly so strong that the company should face the proposition of prosecuting its case unto the end or until substantial justice has been accorded it, no matter how long it takes.

In my judgment this record amounts to nothing short of a community scandal on the very face of it and I do not envy
the future reckoning that the parties who have made
582 it will have, if it be within the power of the writer
to bring them to it. So far as he is concerned, he feels it but a professional duty and privilege to lend his efforts to this end, even if it be necessary to move his family to Kansas City for the time being and 'board' with the case.

This company has offered arbitration. It has been refused.

It has made most reasonable offers of compromise. They have been rejected.

It has made objection after objection to the increasing of the record by detailed and immaterial testimony which has amounted to a mere dust-shoveling process.

The opposition have, in spite of this, continued to shovel dust.

A formal promise to close proofs with ten days' evidence made by them early in the year has been expanded in its fulfillment to over 150 days.

All this makes it clear to the writer that the present suit is a mere tiring out game; and I think the challenge should be accepted and the ultimate reckoning both as to responsibility and costs be thoroughly worked out.

Therefore, while I think that the case of the opposition is apt to collapse before many moons, yet I think it but wise and right to face the grim duty of forcing it through to the end, no matter what bends or breaks or how long it may take.

I think that the feeling of most of the members familiar with the history of the case, if not all of them, is this way; and if the company, its directors and stockholders feel convinced absolutely that substantially the whole of this claim of over one-half million dollars with future accruing interest and all costs will be ultimately assured to them, I think we can all face cheerfully the prospect.

For the purpose of inculcating this feeling of confidence to the company's own advantage and justifying in a measure his opinion heretofore given the company as to the ultimate liability of the Kansas City Southern Company, the
583 writer submitted the plan of reorganization of the Belt Company and his briefs and arguments upon this subject, together with the briefs of the opposition, and all points raised by them to the Hon. John G. Johnson, of Philadelphia, the recognized leader of the American bar, and a legal giant, whose opinions almost universally carry conconviction to the bar at large and stand high above even judicial announcements. He had been consulted by some parties interested in this very question, and was hence not at liberty to serve the writer.

At the same time, a duplicate of the same data was handed to Mr. C. O. Tichenor of Kansas City, a gentleman of recognized ability, and who by common consent stands in signal prominence in the community as lawyer and citizen.

His preliminary report is favorable to the Trust Company, and I will transmit his formal report when completed.

To this the writer desires to add that after the most exhaustive study and brief work ever made by him upon any subject, he is clearly convinced that the Southern Company is liable for this debt, not merely upon one ground, or even upon two grounds, but upon three distinct grounds, each of which is independent of the other.

This may seem at first like an extravagant 'find'. But when it is recollected that during the planning of the reorganization everybody expected the floating debts to be paid in full, it is quite natural to find an ample legal basis therefore in the papers and the plan.

So far as the Belt accounting case is concerned, no one connected with the Trust Company, as I believe, doubts the final establishment of the claims against the Belt to the extent of at least by far the greater part thereof. But if at any time the Trust Company officials have any grave doubts on the

subject, I will stand ready at any time to back up my own assurance in respect thereto with adequate corroborative authority.

584

It seems clear as day to me that the best investment this company can make is in backing up this litigation to the end, or until the dragon yields, even if it has to devote the annual interest upon its claims towards doing so; although I do not mean that anything approaching such sum will be needed.

As to the expenses, the arrangement made with the writer by the executive committee at the outset, and made at his suggestion, was that the fee to be ultimately paid was to await the final result of the litigation, and then to be mutually appraised, from which appraisal the writer was to deduct five per cent. In the meantime he was to be allowed for all ordinary outlays and expenses of the litigation paid out through him and he paid such an amount from time to time as would enable him to compensate his assisting counsel and net him a reasonable and moderate payment on account for his own time.

To meet the enormous record of nearly 30,000 pages, made by the opposition and with our evidence practically completed, and we have paid out and incurred an expense on the following estimates:

Expert accountants and witnesses within	$3,000
Printing, traveling expenses, stenographer and miscellaneous	2,500
The Company has paid me on account	10,000

And out of this I have paid the above expenses, excepting a small portion for which bills have not been rendered, and also my own assistants.

When we consider that the record made even since I took hold of the case was about 18,000 pages and the work accomplished as roughly outlined above, a work which I feel entitled to call prodigious, I think the outlays have been prudently made and are as moderate as the circumstances have permitted.

The company must remember, and I desire to emphasize the fact, that practically all these outlays and as I believe the larger share of law fees will be adjudged against the opposition and finally against the Southern Company.

584a

I have become so interested in the case and so earnestly imbued with absolute confidence in the ultimate

triumph of the Trust Company, and so intensely aroused at the imposition so far visited upon it, that nothing would please me better than to advance every dollar of all manner of expense, and await the ultimate outcome for a repayment of this as well as for all fees or compensation whatever, as most telling evidence of the confidence which I feel in that outcome, and as a willingness to back it up to the fullest extent.

I am not, however, financially able to carry such a burden, and as no one has asked me to, and as I am sure the company would not allow me to, I will not enter into a scramble for the privilege.

In reflecting upon the history of the Guardian Trust Company, and especially upon the Bierce and Belt cases, which have borne so heavily upon its resources, and which look to me like two great crimes, one or two valuable lessons are learned therefrom, which bear directly upon present conditions and the future destiny of the company.

First. The disastrous effects of factionalism in corporations, and especially the practice of dragging corporations into court by their own stockholders in order to adjust factional differences or satisfy personal motives, etc., are seen very clearly in the after effects of the Bierce case.

'Fall-outs' in the corporate family are always to be regretted. It is true that in occasional instances radical measures are necessary to preserve the interests of all parties. But these case are the exception. The law provides methods for a company to act, and a wise plan is to let the majority rule, according to the laws and by-laws and let it be held to full responsibility in the premises.

The methods provided by statute for corporate management are, however, many enough and complex enough to give many occasions for law suits, if lawsuits are desired, and enough, in fact, to wreck the most prosperous corporation.

The Guardian Trust Company—it is an open secret—still has factions. It cannot, however, seriously suffer
585 therefrom, if all struggles for stock control and for its corporate management run smoothly within the methods provided by law, and such contests be kept out of court. It would be far better if, in every such case, all questions between rival factions as to stock ownership and power to vote stock, etc. were arbitrated or referred to some mutually chosen counsel whose decision should be accepted

as final. Such are the methods of broadminded men, and all parties interested in the Trust Company would be doing far better by it by submitting to some plan of the nature outlined.

The Trust Company and each of its stockholders will, no doubt, avail themselves of the lesson taught by the Bierce case and the financial tragedy that followed in its wake.

Second. Since the appointment of the receiver over the Trust Company, everybody has apparently acted upon the idea that the company was of necessity, headed towards liquidation and ultimate extinction.

Now, these are prosperous times; and, if history repeats itself, another very serious panic or set-back in the country at large will not be due for eight or nine years hence. It is useless to prophesy; but it is a fact that not even the croakers are looking for bad times, and the country is apparently in the early stages of a great industrial development. This is particularly true of the territory in the West which is directly tributary to Kansas City.

Again, the centralizing process in finance which has been going on for years in the eastern and older cities, is already on the wane; and I believe all thinking men, alive with the times and who can see a little ahead, believe that the Mississipppi Valley and the West, which has of late years become financially independent, is beginning more and more to handle its own development and other enterprises and to keep hold of its own money for home investment.

There are, too several specific openings, so-called, in
586 Kansas City for a trust company at this time, especially one for the guaranteeing of real estate titles.

Under these circumstances, why should the Guardian Trust Company liquidate itself and die?

There is always a definite value accruing to a corporation from the mere fact that it has existed for a number of years.

Are the sixteen years of the existence of the Guardian Trust Company, and all of its experience, its losses, and even its errors, if you please, of no value to it or its stockholders?

Suppose that the company shall do itself and all parties concerned with it the simple duty of placing responsibility for the receivership attack formally in the judicial records of this community;

Suppose that it shall rebuke the wrong heaped upon it by the Belt accounting case, by insisting to the end and upon the payments of the amounts due it and all costs;

Suppose it then make up a little book or statement of its history, outlining faithfully the facts and openly and formally confessing to the community at large its errors;

And suppose then, with strong people and conservative western men placed in its management, it thus openly bids for trust business in Kansas City and the West;

Would any fair-minded man say that it would have no advantage over a mere beginner?

Rugged character is built up partly upon mistakes committed. And a corporation has a character as certainly as has the hired girl. And it involves no mere theorizing or sentimentalism to say that the experience and even the errors in the early management of the Guardian Trust Company could be turned to capital in facing the community for new business.

Great crises being great opportunities. Hard suffering can be turned to account. And if this company should face
587 with resolution and courage the duty of rebuking through the final decree of the courts the men who were the chief factors in inflicting the wanton blow, upon interests which were community interests and extended wide and deep and involved so many people, and in burdening the company with the abnormal Belt case record, and in grossly misusing the public courts to beat off a clear liability,—such services would have to be offset to any alleged early 'speculative' management, and the result, in all candor, ought to be a large net credit to the company at the hands of Kansas City in arranging for its financial regeneration.

Such suggestions as these may seem novel to older minds, but the fact is that all business activities tend to run in ruts, and there is often considerable capital in new methods provided they are natural and based upon evident justice and right.

And I make bold to say that this old and embarrassed Guardian Trust Company has a definite opportunity to so resuscitate itself as to fit it for a large sphere of usefulness in the growing western financial world; and to this end to turn its history, its experience and even its errors to a large account.

A deep interest in the affairs of the company intensified by a feeling that grave wrongs have been heaped upon it, has led the writer to depart from conventionalism and give out such thoughts as seem to definitely bear upon its welfare, uttered in an impartial spirit as he believes, and from a neutral vantage ground.

Respectfully submitted,

HARRY S. MECARTNEY."

Mr. Smith: I also offer in evidence the letter from Mr. Mecartney of March 26, 1908, to the executive committee of the Guardian Trust Company, being Exhibit 39 in the Mecartney record in the state court, pages 460 to 464, inclusive.

Mr. Rosenberger: Wait a minute: I object as a mere attempt to re-open the issues tried in the case of Mecartney against the Guardian Trust Company decided by the state court.

588 Mr. Smith: We are offering this letter on several grounds, one of them is,—

The Master: (Interrupting) You mean for several purposes?

Mr. Smith: For several purposes; one of them is to show the amount of claim for services, the extent of services, claimed by Mr. Mecartney that he had rendered services of large value in matters outside of this Cambria case.

Mr. Rosenberger: It is an offer made to the Guardian Trust Company when they were threatening to discharge him and when he knew they were about to discharge him, to compromise his claims, fees. It was urged in the Mecartney suit against the Guardian Trust Company as an admission and was considered in that case, and the result of that suit the Master is familiar with.

The Master: I am going to admit it. Go ahead and read it. Read what you think is important and then let Mr. Rosenberger read what he thinks is important.

To which last action and ruling of the Master, the Guardian Trust Company, by its counsel, at the time duly excepted.

Said letter of Mr. Mecartney's of date March 26, 1908, is in words and figures as follows:

"Kansas City, Mo. March 26th, 1908.

To the Executive Committee
of the Guardian Trust Company:

Dear Sirs:

In response to request of the President in Committee meeting this A. M., I have to say:

As I understand it, I am asked to give the Committee an offer or suggestion as to how much money in the judgment of the writer, is due him as representing the fair value of all fees earned up to date by him and his associates and assistants; and also what amount would satisfy the same and all cash outlays paid and incurred by the writer upon the company's behalf in the so-called Belt-Southern controversy.

589 1. Any agreement to fix a certain sum in full of all such fees, etc., earned and incurred to date would be, according to my view, as expressed to you this A. M., a modification of the terms and conditions, express and implied, of the original and existing retainer or relationship, or a displacement of the same, wholly or pro tanto, as the case may be; since such original retainer contemplated a cause pushed to an ultimate decree or compromise under my personal direction and upon my personal responsibility.

Hence, the amount of fees in such case would largely depend upon this relationship continuing to the end of the 'affair' or until terminated for some legal cause.

2. I may be mistaken; but I think that the end is not far off. And I hesitate to make any proposition at this time which, according to my views, would, even if accepted, bar me from obtaining the benefit of what seems to me to be in reasonable prospect, and the opportunity of placing the greater share of the fee burden upon the Southern Company, upon which event I am willing to take a big chance and to contract with reference thereto.

3. I do not care to attempt an estimate of what is now 'due me' under the original and existing relation or contract —for the simple reason that I consider it impossible to tell and that the same cannot be calculated or figured without a view to results, not yet received.

4. As to my ideas as to what would be due or is to come due in any contingency of future success in whole or in part; I likewise decline to attempt to give them here; for the reason

among others, that they are of but little consequence in view of my original offer and agreement to have the ultimate fees appraised, etc. This, as I have before said, is all the protection the Company needs from any mere estimates of mine, which could not in any event damage it.

5. Under the existing agreement, the only amounts 'due me' are by way of reasonable advances to me in order
590 to support the litigation and to hold up my hands in the fight. My estimates or suggestions on this head are explicitly outlined in my letter to the Committee of March 16th and the one annexed thereto of date February 19th.

6. As to a suggestion of how much I would take in cash in full satisfaction of all claims against the Trust Company for fees and disbursements and liabilities, expended and incurred by me to date, and release the Trust Company therefrom, I make the following proposition, viz:

If paid in cash the sum of $55,000.00, I will sign and execute a receipt in full for all such claims and liabilities, and in addition thereto the fees and disbursements in the cases based upon the Gulf notes and First National Bank claim. This, if accepted, as I understand it, would leave the Committee free to continue my services on an ordinary quantum meruit basis as long as they may desire them, or to terminate the existing relations between us at this time or any other time without any further liability to the Trust Company for disbursements or services prior thereto.

The offer herein made (a) is made solely at the request of the Committee, (b) is made in consideration of immediate cash in hand, and is made (c) upon the express condition that it shall be without prejudice to any claim which I now have or may hereafter have in any negotiation, appraisal or controversy with the Guardian Trust Company concerning the value of my services; nor shall such offer be taken as preventing me from showing that the value of my services is other than or different from the amounts hereinafter stated.

Without attempting to divide or itemize the total figure named, I suggest in brief, the following figuring:

591	You have paid me on account	$ 27,500.00
	Total cash disbursed in full to date	7,559.36
	To apply on fees	$ 19,940.64

1. The suits based upon the 'Gulf' notes of about $30,-
000.00 (including interest) and the First National Bank

claim of about $40,000, are not within the scope of the original retainer, and represent an earned fee of about	$5,000.00	
2. The fees in the first injunction case, which was tacked into the Belt foreclosure suits, and which are taxable in whole or in main upon a dismissal of the Supplemental Bill therein, represents a minimum fee earned as of two years ago of	5,000.00	
(In fact $7500.00 would not be excessive)		
Carried forward	10,000.00	$ 19,940.64
3. The Texas Channel & Dock Co. case which was consummated by an exceptionally favorable settlement three years ago, represents a minimum fee as of that date of	5,000.00	15,000.00
		4,940.64
Add figure above given		55,000.00
Gives		$ 59,940.64

as representing upon this tentative basis all services in the Belt-Southern cases, and for incidental work.

As mere estimates are not vital, as said above, it may be uninteresting for me here to attempt to check up with the estimate of cost and time volunteered at the time of my original retainer.

And especially so, since I have written off and on for the last two years in my reports to the Committee, that all estimates are 'off'— The conditions here having developed far beyond anything that I did or could reasonably have anticipated at the time the case was undertaken.

However, I may be permitted to add in checking up with such estimate, and the circumstances under which it was given, that the cause and general situation has grown to more than three times the proportions which could reasonably have been anticipated on December 5th, 1904, viz:

1. It had been stated by the Master and Mr. Hagerman that the complainants in the cause were about through
592 with their evidence. The length of the record then attained was enough to ordinarily insure against a court allowing much more testimony. One would reasonably have assumed that 1,000 pages or so of evidence would be all that would be allowed, especially since the full ledger entries of the Companies had been put in evidence long before. And the short rule entered later by the Master for the closing of proofs justified the reasonable assumption that but a moderate amount of testimony was then in prospect.

2. The record upon the whole case thus grew to over three times the size which had been in reasonable prospect.

3. The original estimate was made upon a basis of our claims seriously involved being $150,000.00 less than what we ultimately saved and sustained, as we feel sure, upon the pleadings alone. (The statements as to book errors made by the auditor of the Trust Company and by the former counsel based upon the auditor's statement, which I had not time to investigate at the time of the original report, turned out to be erroneous).

4. The intervening petition filed in March, 1905, and the claims thereunder, had never been heard of by me, or by any of our people, and presented an entirely new issue or case.

It was in effect (1) an attack upon all our collateral under the 'after acquired property clause' of the Belt mortgages (the Cent. Imp. matter alone consumed several thousand pages of evidence); and (2) the lodgment of a personal liability claim against the Company of $1,500,000.00 or more.

5. It was not anticipated that we would be put to the trouble of an independent state court suit against the Southern Company as we were entitled to assert our rights against it in the original case by way of cross bill.

(Before we sued in the State Court, I presented a printed form of cross bill to Judge Philips. Mr. Moore opposed the filing of the same unless I struck out practically all the legal grounds on which I relied; and Judge Phillips evidencing a hostile attitude to us, the same was withdrawn, and we
593 were thus forced to a new and independent suit in the state courts.

6. The late arduous efforts in preparing a fight upon an adverse receiver were likewise new.

7. The late injunction of Judge McPherson was not only not in reasonable contemplation in 1904, but I submit was not also at the time it issued—as it is a precedent in its 'extremity'.

8. Several weeks of strenuous and elaborate preparation of data for the use of a special committee in attempting to negotiate a compromise in May and June, 1906. (This would not have been necessary in any such negotiations conducted by the counsel).

9. In addition to the above the bill of complaint was twice amended, as well as the intervening petition causing new an-

swers to be filed—the additional amendments in one case covering nearly seventy pages of printed matter, and involving the drawing of a printed answer of 115 pages; there were also special efforts at briefing up the intervention petitions in the Gulf foreclosure case and the Union Terminal Case—involving the $133,000.00 claim and $38,000.00 U. T. Coupons.

10. There have naturally many services of more or less importance been called for from time to time, not properly falling within the legal 'purview' of the retainer which are impossible to schedule here.

I have as thoroughly considered the matter as has been possible for me to do in the few hours allotted therefor but desiring to avoid any dickering or negotiations, I have named a figure which I feel is the least I can accept in justice to myself; and you may take it as an ultimate minimum offer upon the basis tendered.

Lastly, I have my complete office files at my hotel, which you are privileged to view and which I tender as some evidence of the vast amount of work performed in the case; and Mr. Rosenberger has his complete files at his office, which he will be pleased to display to you upon request.

Very respectfully,

(Signed) HARRY S. MECARTNEY."

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594 Mr. Smith: In this same connection, I offer the prayer in the first count of the petition of Mr. Mecartney's, filed in his case on March 28, 1908.

Mr. Rosenberger: I object to it unless the whole document goes in.

Mr. Smith: All right; I offer the original petition, appearing on pages 62, 63 and 64 of the record in the Mecartney case in the state court; and I want to read the prayer—

The Master: (Interrupting) Wait: do you object to that, Mr. Rosenberger?

Mr. Rosenberger: Yes, I think it is absolutely redundant matter in this record; the case was not tried on that particular petition.

Mr. Smith: You are offering the judgment in the Mecartney case and we are offering here extracts from this record because the question before the Master is, if you are going to

consider that judgment, why, it is proper to consider what issues were tried in that case.

The Master: Well, the objection will be overruled. Go ahead.

To which last action and ruling of the Master, the Guardian Trust Company, by its counsel, at the time duly excepted.

The original petition in the case of Harry S. Mecartney against the Guardian Trust Company, appearing on pages 62, 63 and 64 of the Mecartney record, is in words and figures as follows, to-wit:

"Petition.

Now comes the plaintiff and for his said cause of action against the defendant, states that at the times hereinafter mentioned, he was, and for a long time prior thereto had been, and still is, a licensed attorney-at-law and engaged in active practice of the profession of law in Chicago, and in Kansas City, and at various other places in the United States.

That defendant, Guardian Trust Company, is a corporation organized and existing under and by virtue of the laws of the State of Missouri.

595 That at divers times from the first day of December, 1904, to the 27th day of March, 1908, the plaintiff, as such attorney-at-law, at the special instance and request of the defendant, rendered to the defendant professional services in and about divers legal matters and litigated causes, and did during said times, at the instance and request of the defendant, incur, advance and pay out certain moneys at divers times and in various amounts, for and on behalf of this defendant in connection with the said legal and litigated causes.

That the said professional services were of the reasonable value of Seventy-five Thousand Dollars ($75,000.00).

And that there is now due plaintiff on account of said professional services and said moneys, the sum of Eighty-three Thousand Dollars ($83,000.00).

Wherefore plaintiff prays judgment against the defendant for the sum of $83,000.00, together with interest and costs.

And for further cause of action against the defendant, the plaintiff states that on or about December 1st, 1904, under a special contract in writing, duly executed and accepted by the plaintiff and defendant, the plaintiff was retained and en-

gaged by this defendant to direct and prosecute, as an attorney-at-law, to completion by final judgment or decree, or by compromise or adjustment made under direction of plaintiff; certain controversies between this defendant and the Port Arthur Channel & Dock Company and others, then involved in certain suits then pending in the United States Circuit Court for the Eastern District of Texas, at Beaumont, Texas, in one of which suits the Provident Life & Trust Company was complainant, and in the other of which, suits the Barnett & Record Company was complainant, and to both of which suits the defendant Guardian Trust Company was a party, as was also the said Port Arthur Channel & Dock Company and others, in which suits the defendant asserted claims against said Dock Company and others of about Thirty-five Thousand Dollars ($35,000.00), and said Dock Com-
596 pany asserted claims against this defendant of about One Million, Five Hundred Thousand Dollars ($1,500,000).

And under the terms of said agreement in writing, plaintiff also undertook to direct and prosecute to such completion, on behalf of this defendant, a certain controversy or cause then pending in the United States Circuit Court for the Western Division of the Western District of Missouri, at Kansas City, in which cause the Cambria Steel Company was complainant and the Kansas City Suburban Belt Railway Company was ancillary complainant, and this defendant Guardian Trust Company and others were defendants to such cause; and in which said cause the said Belt Railroad Company claimed an accounting from this defendant as to various transactions amounting to upwards of Two Million Dollars ($2,000,000.00), and sought to set aside certain notes and accounts held by this defendant against it and aggregating upwards of Five Hundred Thousand Dollars ($500,000); and in which said cause was involved the title to a large amount of collateral securities in the way of stocks, bonds and accounts held by this defendant as security for its said notes and accounts.

And that plaintiff did undertake to so direct and prosecute the said causes and controversies in the said court in Texas, as provided in said agreement in writing, and did diligently and effectually prosecute and direct the same until about April 1st, 1905, when the same were, with the consent of this defendant, compromised, settled and adjusted under the direction of this plaintiff.

That the plaintiff did effectually and diligently prosecute and direct said controversy or cause in the said court at Kansas City until the 27th day of March, 1908, upon which date the defendant, without any notice, cause or excuse, terminated said retainer or engagement, and discharged plaintiff from such service and refused and declined to permit plaintiff to continue or pursue with the prosecution or direction of said controversy or cause.

That plaintiff has incurred, advanced and paid out certain moneys at divers times and in various amounts under said engagement and retainer, for and on behalf of this defendant, in connection with said controversies and causes
597 in Texas and at Kansas City, which moneys amount to the sum of Eight Thousand Dollars ($8,000.00).

That the defendant has paid the plaintiff at various times on account of said services rendered by plaintiff to defendant and said moneys so expended, the aggregate sum of Twenty-seven Thousand, Five Hundred Dollars ($27,500.00).

That by reason of the premises, and after allowing credits to the defendant, there is justly due and coming to this plaintiff from said defendant, the sum of Seventy-Two Thousand, Five Hundred Dollars ($72,500.00), for which, together with his costs, plaintiff prays judgment.

C. O. TICHENOR,
R. J. INGRAHAM,
REED, YATES, MASTIN & HARVEY,
Attorneys for Plaintiff."

Mr. Smith: I offer in evidence, the following extract from the testimony of MR. MECARTNEY, for the purpose of showing that the First National Bank case on the Gulf notes, was included in the claim for compensation under the first count of his petition:

"Q. Now, you further speak of the suits based upon the Gulf notes of about $30,000.00 and the First National Bank claim as not within the scope of your original retainer?

"A. Right.

"Q. You are suing in this case for the value of services performed in the Gulf note case as being within the scope of the general Belt litigation, are you not?

"A. I am.

"Q. And the First National Bank claim of about $40,000.00 was included in the Cambria suit by amendment, was it not? A. It was.

"Q. And it was also made a basis of the second of the three state court suits? A. Correct."

598 Mr. Rosenberger: I object to that, for the reason that it appears on the face of the record in the Mecartney suit that any services rendered in the suit of the First National Bank against the Guardian Trust Company no claim was made in the Mecartney suit and this is a mere attempt to re-open the issues in the Mecartney suit, as shown by the record in that case.

The Master: The objection is sustained, if Mr. Rosenberger's statement is correct; assuming your statement is correct, there was included only the services Mr. Mecartney rendered in recovering from the Cambria Company and the Kansas City Southern Railway Company the amount of the judgment which the First National Bank had obtained on the endorsement of those notes, the objection will be sustained.

Mr. Smith: We contend he has no right on any theory to have his services rendered in trying to enforce against the Southern Company the amount of such judgment in the First National Bank case.

The Master: The objection will be sustained. I cannot agree with you about that. The services rendered in arguing the case of First National Bank against the Guardian Trust Company in the Supreme Court ought not to be in this case, ought not to be claimed.

To which last ruling and action of the Master, in sustaining the objection of the Guardian Trust Company to the last offer of an extract from the testimony of Mr. Mecartney in the First National Bank case, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Mr. Smith: I want to offer from the memorandum opinion of Judge Frank G. Johnson—

Mr. Rosenberger: (Interrupting) Here again, if anything is to be offered at all from that opinion, I will object to its being received in fragments and I will renew my objection, it is a mere encumbering of the record.

Mr. Smith: Well, I am not going to encumber the
599 record with the whole memorandum opinion. The only thing I wanted from it was to show you that the Texas case was under his consideration.

The Master: Why don't you call my attention to it without reading it?

Mr. Smith: I don't think I am justified in doing that. In the Supreme Court they comment on it and it is here and I just want to show he laid some stress on that fact, that is all. But I am not going to put that whole record in. I want it understood one of our objections to this Mecartney judgment is that the judgment is excessive. In support of our objection on that issue, I want to offer the following evidence from the record in that case.

Mr. Rosenberger: Before you do so, I want to say that any offer for that purpose is objected to, for the reason it has no tendency to show that the Guardian Trust Company did not actually sustain the expense represented by the amount paid in satisfaction of the final judgment in the Mecartney suit in the state court.

The Master: The objection will be sustained, because the Master, while he is willing to hear evidence of some of the service for which the Mecartney judgment was rendered which was entirely outside of the litigation which the Master considers as a part of the so-called Cambria-Kansas City Southern Litigation, he thinks he cannot go into the question of whether the amount, or basis, or estimate put on that service in the judgment was excessive when the Guardian Trust Company only paid it after final judgment, when they were compelled to pay it or stand execution.

Mr. Smith: I want the record to show what I want to offer.

The Master: Is it very long?

Mr. Smith: No.

The Master: Very well; I think that will save a re-reference and I would rather have it go in the record.

600 To which last ruling and action of the Master in sustaining the Guardian Trust Company's objection to the testimony offered of Mr. Mecartney's, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Mr. Smith: I am reading from the answer of Mr. Mecartney on page 201 of the record:

"I should have stated that in the fall of 1907, in September, while the matter was under advisement by Judge Douglass, Mr. Rosenberger made a printed brief in detail upon the issues of the intervening petitions, supplementing the printed argument which had been made before that time. He also appeared with me in court at the most crucial moments in the argument of the most important motions, and in the early part of 1908 presented the petition for the increase of bond, himself, in my absence. He also aided in the argument against the granting of the temporary injunction before Judge McPherson, aiding in the arguments therein. He also conferred with me from time to time on my visit to Kansas City and several times at Chicago and at my house at Hinsdale. He took the New York depositions to which I have referred, and took depositions at Detroit. He interrogated witnesses in detail and took nearly all of the evidence that was taken and attended upon the taking of the evidence."

Mr. Smith: Now I want to read from his statements on page 767 and 768, I suppose subject to the same objection and the same ruling, but I want to get it in the record. It is at the bottom of page 767 and top of page 768:

"Q. You stated you paid Mr. Rosenberger $4500.00 on account. I will ask you if that represents the total payment to him, or the total expense you include by reason of his services in the case?

"A. No. I want to make it clear that is a mere fraction of the total amount paid, and agreed to be paid Mr. Rosenberger. The amount which we finally settled on as a total payment was $15,500, and interest on unpaid amounts that run from the time I was discharged.

601 The Referee: How was that, $15,000 in addition to what he had.

A. No, $15,500 including the $4500 and 6 per cent interest from March, 1908."

The Master: You object to that, Mr. Rosenberger?

Mr. Rosenberger: Yes, I didn't think it was material in the Mecartney case and I don't think it is material here, even if it had been in the Mecartney suit, because it is comprehended in that judgment.

The Master: The objection is sustained, on the same ground on which the last objection as to the extract from Mr.

Mecartney's testimony as to the amount he paid Mr. Rosenberger.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted, and still except.

Mr. Smith: I also want to offer in evidence the conclusion of Judge McCune, who was referee before whom the case was tried; it is Number 9 of his conclusions:

"The Referee, therefore, finds in favor of the plaintiff on the first count of his petition, in the sum of $14,860.57, with interest at the rate of six per cent per annum from March 28, 1908;

On the second count of plaintiff's petition the Referee finds in favor of the defendant."

Mr. Rosenberger: I object to that, on the ground it has no probative value whatever, not only for the reasons heretofore given, but because that judgment of Judge McCune's was vacated and set aside by the court which appointed him referee and went entirely out of the case.

The Master: The objection will be sustained.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

602 Mr. Smith: I also want to have Mr. Rosenberger agree that the judgment in the First National Bank case, the case of the First National Bank against the Guardian Trust Company, 187 No. 495, was decided by the Supreme Court of Missouri on March 16, 1905; that is the date as shown by the report.

Mr. Rosenberger: Yes, I am perfectly willing that that judgment may be considered in evidence.

Mr. Smith: May be considered in evidence without including it in the transcript?

Mr. Rosenberger: Yes.

The Master: The final judgment was that date?

Mr. Smith: Yes, that is the date of the opinion of the Supreme Court of Missouri.

I am not sure, if the Master please, whether there has been admitted in evidence the decree of the Federal Court in Texas disposing of the Provident Life & Trust Company case, I know it has got Miss Parlin's mark on it and I read part of it, but I want it understood that that decree is in evidence.

The Master: You mean that entire litigation, the Dock case?

Mr. Smith: Yes.

Mr. Rosenberger: I presented the stipulation.

Mr. Smith: You presented the agreement, rather than stipulation.

Mr. Rosenberger: If there is any distinction, all right.

The Master: I remember that was put in evidence.

Mr. Smith: With reference to Items 182 and 183, and also on the issue of good faith, I want to offer the testimony of Mr. Mecartney on page 648 of the record in his suit in the State Court against Guardian Trust Company showing the circumstances with reference to the employment of Mr. Wilcox.

Said testimony is as follows:

"Mr. Rosenberger telephoned me on Sunday at my home in Hinsdale that Mr. Wilcox, whom the other side had
603 called, was on the stand, and by making a search of the records could work out that whole Degoigen item as an expert accountant, and Mr. Rosenberger wanted authority to make a contract with him and pay him $450.00 therefor. The draft came in the next day or the day after, for $446.66, with a letter that he had contracted with Mr. Wilcox; that Wilcox had thought that ½ of 1% of the Degoigen item was reasonable, and that he had made that contract; and I sent back a letter directing that that would not do; that I didn't believe in making a contract on that basis, but if Mr. Wilcox should make it a round figure of $450.00 and that was the contract (page 646 of Mecartney record).

The Master: It has been excluded too, on the ground that the question of good faith was foreclosed.

Mr. Smith: Oh no, this is also on the items 182 and 183.

The Master: Separate your offer then.

Mr. Smith: I am offering it on two different grounds, first with reference to the right to charge the amount paid Mr. Wilcox as costs in this case; and also on the ground—

The Master: (Interrupting) Wait a minute; let us have one at a time.

Mr. Smith: I am offering this, if it is admissible, on either one of the two grounds. It is admissible—

Mr. Rosenberger: (Interrupting) Well, the objection made at the time and during my own testimony was that the amounts paid to Mr. Wilcox for his expert service were allowed to Mr. Mecartney in his suit against the Trust Company and that that is not now open to inquiry, it having been paid on final judgment. As to its being offered by the Southern Company or Cambria Company in support of its contention that it brought or instigated this litigation in good faith, that I don't think is open to inquiry; and, furthermore, the testimony which is offered has no probative value one way or the other upon that issue, as it is being
604 offered in contradiction of the testimony as to Items 182 and 183, which has no tendency to show these amounts were not paid to Mr. Wilcox, having been included in the judgment in the Mecartney suit. What is the use of wasting time on that?

The Master: The objection will be sustained.

Mr. Smith: On this same issue, these Items 182 and 183, and also on the issue of good faith, I want to offer the following extract from the testimony of Mr. Wilcox appearing in his evidence in chief and before he was cross examined by counsel for the Trust Company.

Mr. Rosenberger: The evidence of Mr. Wilcox to which you refer, is in the Cambria record given before Judge Douglass in the Cambria suit?

Mr. Smith: Yes.

Mr. Rosenberger: I object to it being offered in evidence. If there is anything that is pertinent it can be referred to. How many times does this have to be offered? I offered it once in the Cambria suit, in this case in which the Master is stitting; and now offered again.

The Master: You object also on the ground that the Master has been foreclosed to receive it on the ground of the decisions of the upper courts?

Mr. Rosenberger: Absolutely.

The Master: The objection will be sustained.

To which last action and ruling of the Master in sustaining the last foregoing objections, the Kansas City Southern Railway Company and Cambria Steel Company, at the time by their counsel, duly excepted.

The extract from the testimony of Mr. Wilcox so offered in evidence, is marked "Kansas City Southern Company's Exhibit 5" and is in words and figures, as follows:

"Kansas City Southern Railway Company's Exhibit 5.

Q. Now, I will ask you to look at the books of the Trust Company which have been brought here, and ascertain
605 if in 1897, the Trust Company assumed the payment of certain real estate notes, aggregating approximately $103,000.00, and charged the amount of those notes to the Belt Company in open account?

A. (Witness examines books) Yes, sir.

Q. Now, if you can get the book of the Trust Company showing the assumption of those notes?

A. I have got the book here.

Q. Before you give that, when was it that you and Mr. Rosenberger examined the books of the Trust Company?

A. I examined those books a year or a year and a half ago, on this transaction.

Q. At Mr. Rosenberger's request?

A. No, at Judge Trimble's request.

Mr. Rosenberger: When I said 'my request' I meant, at Mr. Trimble's request.

Q. Did you examine them at Mr. Rosenberger's request.

A. I don't believe I did. I examined them at Mr. Mecartney's request—about a week ago, when I first came, so as to refresh my memory on this.

Q. When did he request you to make this examination?

A. About two weeks ago.

Q. In Chicago?

A. Yes."

Mr. Smith: In this same connection, and for the same purposes, I want to offer the correspondence between Mr. Mecartney and Mr. Harris, President of the Guardian Trust Company, with reference to the use of Mr. Wilcox as a witness in this case, being Exhibits 107 and 108 in the record in the Mecartney case, pages 1203 and 1204.

The Guardian Trust Company objects to the offer in evidence of said exhibits 107 and 108 in the record in the Mecartney case, for the reason that the Master has been foreclosed from receiving it on account of the decisions of
606 the upper courts.

The Master: The objection is sustained.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Said Exhibits 107 and 108, marked Kansas City Southern Railway Company's Exhibit 6, are in words and figures as follows:

"Kansas City Southern Railway Company's Exhibit 6.

Exhibit No. 107.

Feb. 17, 1905.

Mr. H. H. Harris, Pres.,
Champaign, Ill.

Dear Sir:

Your phone message received. As to the status of the litigation, there is nothing new. Everything this week, as Mr. Rosenberger reports. 'is running smoothly'.

Mr. Wilcox gave a version in writing several years ago which we have only discovered lately, explaining the De-Goijen item of $89,000, and explaining the item in our favor. We felt somewhat hopeful of this item now, but it is a dangerous item and our hopes of saving it are not yet firm.

As Mr. Wilcox explained the stock profit is decidedly in our favor.

We have not put Mr. Wilcox on the stand yet. The other side are going to use him for some purposes. He professes to be neutral.

As I reported to you, the Southern Road, has agreed by stipulation to come into the Belt case and if they do, they will save the additional suit at law which at one time we contemplated. They are under stipulation to come in in a week or ten days longer, I have forgotten the exact date.

Truly,

H. S. MECARTNEY.

607 Exhibit No. 108

Champaign, Ill., Feb. 18, 1905.

H. S. Mecartney, Esq.,
Chicago, Ill.

Dear Sir:

Your letter of the 17th received. I had quite a talk with Mr. Wilcox when in Kansas City. He had not then gone onto the stand, but intended going on Thursday at 2 o'clock P. M. He is out of employment, and made overtures to me, also to your attorney, stating he knew a great deal about it and would like very much to be in a position to assist us. I suppose if the other parties would make him a good proposition he would be for them, so I have very little faith whatever in his sincerity. I don't believe it would be the right thing to do to let him go through those books and get evidence to go against us. In these two particular cases, if it stops there, I do not know as there is any objection, but I do oppose him delving into those books.

In regard the Southern Road, the only thing about it that I see is that we might lose our opportunity by time limitation. I do not know when that would expire, or whether it would work in this case, as a suit would have to be brought within a statutory time and for that reason, I have been a little anxious to have that matter attended to so as not to lose our standing in the case. You say that the stipulated time by our agreement will expire within a week or ten days, so if they do not do as they agreed, the only thing for you to do would be to proceed on the lines which we have heretofore talked. Of course, if they will come in and make themselves a party to the suit all right, but I do not wish to lose our standing by limitation.

Yours respectfully,

H. H. HARRIS, President."

Mr. Smith: Now in order to keep our record straight on that matter that was referred to in the letter from Mr. Mecartney to Mr. Harris, a report or version in writing of the Degoijen transaction, which, as it is stated in that letter, he had made several years before I would like to ask
608 on behalf of the Kansas City Southern Railway Company and Cambria Steel Company an opportunity to examine that report or letter.

The Master: Who has it?

Mr. Smith: The Trust Company has it, I assume.

The Master: Do you know, Mr. Rosenberger?

Mr. Rosenberger: Oh, I don't know that it is referred to at all. I question whether any of those matters are available, in view of the changes that are involved in the successive receiverships and changes in management and I doubt whether it could be had. If it could be, I would strenuously object to making the slightest effort to find it, because it is utterly immaterial, the merits of the DeGoijen matter having been inquired into in the main litigation, the Cambria suit, and determined.

The Master: That is not an offer; that is a request.

Mr. Smith: That is a prayer for opportunity to examine that document, which is referred to in that correspondence.

Mr. Rosenberger: My answer to that is, I don't know that it is in the Trust Company's possession. I have never seen it and if it were in our possession, I object to producing it or permitting it to be examined, on the ground it is utterly irrelevant.

The Master: Go ahead, Mr. Smith; that don't call for any ruling by the Master.

Mr. Smith: I am asking the Master to require that the letter be produced for our inspection; yes, I am asking for it in that form.

The Master: Well, for the reason stated by counsel and because it seems to the Master irrelevant, and immaterial and because of the impracticability of complying with your request, it will be refused; that is, no order will be made to produce this document.

To which last action and ruling of the Master in refusing to order the production of said letter, the Kansas City Southern Railway Company and Cambria Steel Company, at the time, by their counsel, duly excepted.

609 Mr. Smith: I now want to offer in evidence on the question as to the costs that may be taxed in this case, if costs as between solicitor and client may be taxed herein, the following extracts from the testimony of Mr. Mecartney, appearing on pages 344, 1194 and 1195 of the record in his case in the State Court. I am offering these on the theory they are statements by counsel in that case, and I want them so they may be presented to the Master and the Court, show-

ing the position taken by Mr. Mecartney and I am offering them on that account. I have read those to the Master heretofore.

Mr. Rosenberger: I object to that as absolutely irrelevant.

The Master: The objection will be sustained.

Mr. Smith: It may be considered that I am offering evidence supporting the testimony contained on that matter without reading it here now again. I have read those to the Master heretofore.

The Master: Is this on the question of whether some particular items are properly chargeable as costs between solicitor and client?

Mr. Smith: No; Mr. Mecartney in giving his testimony in the state court stated in his testimony upon what issues he contended costs might be taxed. It is in his evidence in the case and other reports made by him.

The Master: The Master will sustain the objection. I don't care what his views are on the subject. I don't see how it could be relevant.

To which last action and ruling of the Master excluding the testimony offered of Mr. Mecartney as to costs, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

The extracts of testimony so offered in evidence are as follows:

"Q. In a letter from you to Mr. Prescott of date February 28, 1906, you estimate the Trust Company's claim against the Belt or Southern Company for attorneys' fees, stenographers' fees and other expenses at $40,000.00. Upon what was that estimate made?

610 "A. That estimate was made upon the basis outlined in my preliminary report that the court, notwithstanding it was considerable of a precedent, would allow us an attorney's fee for the frivolous litigation that had been prosecuted on behalf of the accounting cases * * * I ought to say in this connection that I found out in the prosecution of my inquiry that the Federal Court, and under practically the same status (evidently he said 'statutes'), had allowed attorneys' fees as a matter of course, and had stopped the practice on the ground that it could not tell when litigation

was frivolous or not, and for that reason had dropped it, but there was no reason why the court would not take it up again in a case of this kind. (1194, 1195).

The matter was new, and more or less a precedent." (344).

Mr. Mecartney further testified:

"I never expected the court to allow all of our attorneys' fees in the entire litigation * * * I may several times have claimed that, but I don't think I did, but I did feel that if we got an impartial hearing in that case that the court would allow us a good round share of our attorneys' fees in the accounting matter on the ground that the litigation had been trivial, and the record had been made on false pleadings, and a patent theory, a theory patent on the face of the pleadings, common business rules, etc. I never stopped to consider just how much, but that it was a proper claim to make in negotiations for settlement, and to earnestly make, and that the court would tax a good round sum against them as attorneys' fees in the accounting issue only; not in the consolidation issue, but on the accounting issue, possibly even on the intervention issue, as it developed. (344).

It only included the accounting issues, and not taking into consideration any other side issues." (1194).

Mr. Smith: Now on the issue of good faith, I want to read from Mr. Mecartney's report, Exhibit 46, made by him on February 14, 1905, to the president and executive committee of the Guardian Trust Company, the following statement in his report, page 589 of the record.

611

Mr. Rosenberger: What record?

Mr. Smith: Mecartney case record in the Supreme Court.

Mr. Rosenberger: I object to reading it as irrelevant on counsel's own statement that it is offered on the question of good faith, that matter having been decided.

The Master: The objection will be sustained. The Master will not hear it.

To which last action and ruling of the Master, in refusing ot hear said report of Mr. Mecartney's, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Said report, Exhibit 46, is marked Kansas City Southern Railway Company's Exhibit 7, and is in words and figures, as follows:

"Kansas City Southern Railway Company's Exhibit 7.

Exhibit 46.

February 14, 1905.

In re Trimble & Braley Bill.

To the President and Executive Committee,
Guardian Trust Company.

Gentlemen:

Mr. Prescott is chairman of the committee to whom was referred the matter of the bill of Trimble & Braley; but at the request of himself and Mr. Heyneker, I have had correspondence with Judge Trimble, and, in connection with the committee, negotiated verbally with him.

Judge Trimble wrote me that he would furnish the executive committee at the coming meeting with a copy of the correspondence had between him and me with respect to the bill, and Mr. Prescott and Mr. Heyneker will have my letters to them. I annex hereto a copy of Judge Trimble's letter received yesterday, as well as his revised bill amounting to $22,162.30, which includes interest at six per cent from March 30th, 1904.

612 He evidently is going to make an effort to have the Executive Committee accept his offer of $13,000.00 in full settlement.

The more I look into the question of recovering the $6,000.00 item for the Texas and Louisiana foreclosure, the more I am convinced: (1) That the chances of recovering the half of it are very poor; and (2) That the company acted on his advice in incurring this indebtedness, and if it cannot recover the amounts paid, it is chargeable to Judge Trimble's error in advising it.

I would very much like to have the claim settled; but, if we settle it on Judge Trimble's basis, it will be practically settling his bill with but $2,000.00 or $3,000.00 discount; for the other seemingly heavy discount will be all consumed by the loss in the intervention.

But I have more things to suggest in regard to Judge Trimble's bill, which it is not more pleasant for me to suggest than it will be for him to recognize them, and these relate principally to the conduct of the Belt case.

In my printed report I stated that the matter of this long accounting should have been shut out at the beginning, either

by demurrer to the bill, or by insisting by formal motion that the question of whether or not the Guardian Trust was entitled to account, should be first tried. If it had been the court would never have gone into one-third of these matters that have been plowed through in the case, consuming an inordinate amount of time, and causing the Trust Company a big expense and great damage by delay.

Judge Trimble says Judge Black felt we would have to account sooner or later; but, as Judge Trimble was counsel of record in the case, it was his privilege to formally protest against going into these everlastingly tedious details extending over the whole business life of the company, and to place himself of record in writing.

But, even if he were not responsible for going into the accounting, he certainly is responsible for no effort
613 being made to have it tried by the well-known and ordinary schedule plan, i. e. by 'surcharging and falsifying the account'. A motion to do this we have lately made and the Master has sustained it. It could have been made several years ago as well as now, and saved the taking of four-fifths or nine-tenths of the testimony which has been taken.

Mr. Willey has said that Judge Trimble has consistently objected to going into these old matters. But that was not enough and did not release him from the affirmative duty of adopting the regular plan of getting rid of the accounting in short order,—a plan which has been in vogue for centuries.

Counsel cannot escape such a responsibility by mere passive objection.

The two vital errors made: (1) As to going into the accounting; and (2) a failure to conduct it according to the ordinary rules,—are not matters of practice on which two well-informed counsel would disagree. There is no question but what the court's and Master's duty would have been to yield to these motions, as Judge Douglass has lately specifically ruled.

At the beginning of such a case a trial brief should have been prepared on the methods of practice; for, in a case of this kind, the merits of the case are largely involved in the way it shall be conducted.

The most casual reflection will show that probably $75,000.00 to $100,000.00 have been consumed by both parties to this case in dragging it along in this manner for three years,

counting the damage by delay and all indirect damage in addition to the direct expense.

This is a frightful showing and somebody is responsible for it. Who on our side is responsible but the counsel in the case?

My relations with Judge Trimble have been very cordial, and I have found him to be a frank and candid man, and consider him a decidedly able lawyer. But I think he has made the mistake of trying to do too much. There
614 were heavy responsibilities thrown on him at the time this suit was started which he should have declined. It was much more than he or any other man could have done well in the time allowed him. The result was that the most vital and necessary things to be done at the beginning of this case were not done; nor were the court and master furnished with any brief, nor were motions made which would throw the responsibility for the enormous consumption of time and the great waste occasioned, upon the shoulders of others.

I think, if Judge Trimble insists on settling the whole matter, that $10,000.00 for his total bill is a mighty liberal offer on the part of the Trust Company, all things considered. More than that, if the matter comes to a trial in court, he will be very apt not to get a dollar. For I am satisfied that the court would sustain a cross-claim on the part of the company for far more than the total amount of his bill as presented.

Respectfully submitted,

H. S. MECARTNEY."

Mr. Smith: In that same connection, I want to offer from page 1164 the testimony of Judge Trimble with reference to the Degoijen transaction.

The Master: Is that on good faith?

Mr. Smith: That is on good faith.

Mr. Rosenberger: I object to said testimony of Judge Trimble's on the ground that it is offered on the question of good faith, that matter having been decided by the upper courts.

The Master: The objection will be sustained, for the reasons heretofore stated, that the Master considers he is foreclosed from going into the good faith question by the higher courts.

To which last action and ruling of the Master, in excluding the testimony of Judge Trimble, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Said testimony of Judge Trimble so offered in evidence,
615 is marked Kansas City Southern Railway Company's Exhibit 8, and is as follows:

"Kansas City Southern Railway Company's Exhibit No. 8.

A. The claim that we called the Degoijen item was one that was very difficult of ascertainment. It was difficult to get at the controlling facts to a certainty, so as to determine what the merits of it were, because it was a very complicated matter, complicated bookeeping and other matters outside of the record and bookkeeping that had to be corrected before you could determine. I had Mr. Wilcox come here from wherever he was, to assist in looking that up, and he did, and wrote me fully about it. I not only saw his letter and read it, but had several conferences with Mr. Wilcox while he was in the office of the Trust Company looking over the books and accounts preparatory to making his report to me. I also had Mr. S. G. Willey go over the accounts and report to me, and I in connection with Mr. Willey and Mr. Wilcox talked the matter over several times, the result of which was that I concluded that the Guardian Trust Company's claim in respect to that matter was valid and safe. I won't say safe, but was valid, and would probably be allowed. I don't now remember the details of the claim, but I do remember that I concluded that the Guardian Trust Company's position in regard to that claim was correct. Whether I ever told Mr. Mecartney that or not, I don't remember. I don't remember whether I talked with him about that particular transaction or not."

Mr. Smith: On that same issue, I want to offer from page 732 of the record a sentence from Mr. Rosenberger's description of this Degoijen transaction and I would like to offer it with the understanding that I am not required to ask it of him as a witness.

Mr. Rosenberger: I make the same objection.

Mr. Smith: You do not object on the ground I am not asking it of you personally as a witness?

Mr. Rosenberger: No.

616 The Master: The objection will be sustained, for the reasons heretofore stated, on the issue of good faith.

To which last action and ruling of the Master in declining to receive in evidence said statement of Mr. Rosenberger in relation to the Degoijen transaction, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Said evidence of Mr. Rosenberger so offered, is marked Kansas City Southern Railway Company's Exhibit 9, and is as follows:

"Kansas City Southern Railway Company's Exhibit 9.

A. I have already mentioned the filing by the complaining receivers of an amended bill. The actual work of preparing the answer to it devolved upon me, although this, as well as everything else I did in the case was submitted to Mr. Mecartney, and there were consultations concerning it. I have the answer of the Trust Company prepared as stated, before me. This is a printed document of 118 pages and contains a complete re-draft of the prior pleadings with much new matter; among the new matter in this answer being the setting out of all the facts and circumstances touching the Degoijen item, to which I referred early in my testimony, of about $90,000. I perhaps should have said in connection with that item that the book entries of the Trust Company concerning this transaction with Degoijen and the Belt Company were very equivocal to the extent that Mr. Willey, the auditor of the Trust Company, confessed his inability to unravel it. To properly state the defenses of the Trust Company concerning that item, required an exceedingly tedious investigation, and the defense as there stated is in substance according to the facts found by the Master in his report. This Degoijen item had been regarded by the former counsel of the Trust Company as one which would have to be yielded to the receiver, and I think that at an early stage Mr. Mecartney himself was of that opinion, and I think that I also was of that opinion, but after I had investigated it and had reported to Mr. Mecartney and discussed it, we decided there was abso-
617 lutely nothing in the claim of the receivers, and we ought to be able to successfully defend it."

Mr. Smith: I want to offer from the statement of Mr. Mecartney on page 360 of the record in his case in the Supreme Court and also from page 299 of the same record his evidence

to the effect that the liability of the Southern Company was a complicated legal question.

The Guardian Trust Company objects to the offer of said statement of Mr. Mecartney contained in the record in the Supreme Court for the same reasons as last above stated.

The Master: The objection will be sustained, for the same reasons and on the same grounds.

To which last action and ruling of the Master in excluding said statement of Mr. Mecartney, contained on page 360 of the record in the Mecartney case in the Supreme Court and also on page 299 of the same record, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Said statements of Mr. Mecartney, so offered in evidence, are marked Kansas City Southern Railway Company's Exhibit 10, and are as follows:

"Kansas City Southern Railway Company's Exhibit No. 10.

Q. The brief that you allude to is in reference to the consolidation issue, and the liability of the Southern was not a matter that should be controlled entirely by the pleadings, was it, Mr. Mecartney?

A. Yes sir; the pleadings and one or two actual conceded facts in the record.

Q. Those facts were quite long and complicated, were they not?

A. No, sir.

Q. Involving the entire plan of reorganization?

A. Well, those are not the facts; they are documents.

Q. They relate to facts, don't they?

A. There was no fact in that reorganization plan necessary for us to sustain our claim that was disputed or
618 that was not conceded, no necessary fact.

Q. There were issues of law, however, growing out of the conceded documents, that were more or less complicated, were they not?

A. On of the most complicated questions that I have ever worked on, and the brief the hardest to master I ever worked on, and that consolidation brief was the best of which I am capable, which is not probably saying much." (Mecartney Rec. page 360).

"In respect to the question of ultimate recovery against the Southern, I recognize that that is more a question of law." (Mecartney Rec. page 299)."

On Friday, February 8, 1924, at 9:30 o'clock A. M. said hearing was resumed before the Master, and the following proceedings were had:

The Kansas City Southern Railway Company and Cambria Steel Company offered evidence, oral and documentary, that this litigation was instituted and prosecuted in good faith, and on reasonable grounds, which evidence the Master, on the objections of the Guardian Trust Company and its receiver, excluded on the grounds that he was precluded by the order of the District Court from trying such issue, to which ruling of the Master, the said Railway Company and the Cambria Steel Company duly excepted. Thereupon said Railway Company and said Steel Company made an offer of proof and filed their motion for leave to offer evidence upon such issues, such motion and offer including a voluminous statement of oral and documentary evidence which said parties desired to offer and on motion and offer, were, upon the objection of said Trust Company and its receiver, overruled, and denied by said Master, the said parties duly excepting separately to each of said rulings of the Master.

Mr. Smith: I want an understanding as to certain pieces of evidence. We may understand that the decision in Guardian Trust Company vs. Kansas City Southern Railway Company, 146 Fed. 337, the first injunction, may be considered in evidence by the Master without incorporating
619 in the transcript; and the same as to the second, the same title, 171 Fed. 434. I want it understood they may be considered in evidence without having them incorporated in this transcript.

Mr. Rosenberger: That is all right; without elaborating, my position is that the Court and Master have the right to conditionally notice those opinions.

Mr. Smith: You won't put it on one ground, but may be on one ground or the other, either on that theory or your theory.

Mr. Rosenberger: I don't want to be guilty of making them part of this record. I have stated as broadly as I can I consider them both before the Master.

Mr. Smith: I don't accept your proposition on that. I don't think all these things are before the Master.

The Master: They are before me two ways, because they are originally and because you put them in.

Mr. Smith: I am offering them in evidence with the understanding Mr. Rosenberger says they are already in evidence.

The Master: Mr. Rosenberger does not recede from his position already stated.

Mr. Smith: I also want to offer in evidence the voucher showing the payment of the amount that it was adjudged the Kansas City Southern Railway Company was required to pay to the Guardian Trust Company, showing that it did pay the same on April 15, 1916; and I think possibly it would be better to have that voucher introduced and have it copied into the record, because it was paid with the understanding that the amount due on the judgment might hereafter be adjusted.

The Master: Any objections to that?

Mr. Rosenberger: I don't object to the voucher, but I do object to the statement that seems to be implied, not intentionally by Mr. Smith, that the Southern Company had paid what was due on the statement.

620 Mr. Smith: I want to offer in evidence the voucher which was paid as a result of the decision of the Supreme Court of the United States in this case.

Said voucher last above offered in evidence by the Kansas City Southern Railway Company is received by the Master and is in words and figures as follows, to-wit:

"Law Dept. No. .... Auditor's No. 68 Apr. 1916.

The Kansas City Southern Railway Company

To Guardian Trust Company, Dr.

1916. Kansas City, Missouri.

Apr. 15, 1916.

For

On account of judgment to be entered in the case of Cambria Steel Company vs. The Kansas City Suburban Belt Rail-

road Company, et al. No. 2468 in the District Court of the United States for the Western Division of the Western District of Missouri, in accordance with the mandate of the Supreme Court of the United States in the case there styled "The Kansas City Southern Railway Company, Appellant, vs. Guardian Trust Company, et al., Appellees, as follows:

By Draft	$821,623.28
By receipt by Guardian Trust Company as its own of the Special deposit referred to in paragraph 5 of the decree of the Circuit Court and directed by the Circuit Court of Appeals to be deducted from the amount of the judgment	40,001.25
By interest actually earned on said special deposit to this date	17,268.01
	$878,892.54

It is agreed that this is an approximation only, and that it shall be checked and verified as soon as possible, and that any errors of computation which may have been made are subject to correction, and that an adjustment will be made as between the parties by paying any balance found to be due from one to the other.

It is also understood that the Trust Company is to make delivery to the Southern Company of the residue of the collateral, to which, under the decree, it is entitled at the time of satisfaction of judgment.

See Bill #54725

Approved	Approved	Approved	Approved
P. W Wooley, Assistant Auditor	S. W. Moore, General Solicitor	J. A. Edson, President.	L. J. Hensley, Auditor

Distribution:

Guardian Trust Co. Judgment 878,892.54

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621 Received Apr. 15, 1916, from

The Kansas City Southern Railway Company

Eight Hundred Seventy-eight thousand, eight hundred ninety-two and 54/100 Dollars in full payment of above account.

GUARDIAN TRUST COMPANY,
By John A. Prescott,
Vice-President and Treasurer.

Note—The above receipt must be dated and signed by the party in whose favor this voucher is made, or when signed by another party, the authority for so doing must in all cases accompany it; and when signed "His Mark" signature Must Be Witnessed. When receipted for a Railroad Company or other corporation or organization, the party signing must designate his official title and name of corporation or organization. One party signing for another must give his own name in full.

Said voucher is endorsed on its back as follows:

"Voucher No. 68 Apr. 1916,
The Kansas City Southern Railway Company
Receipt of
Guardian Trust Company
Kansas City, Missouri.
$878,892.54
Treasurer.
Paid Apr. 15, 1916.
Kansas City, Mo."

Mr. Smith: I would like to have Mr. Rosenberger to agree in the record that the evidence in this cause was closed and the case was submitted to the Master for final decision. It is admitted that before Mr. Mecartney's discharge by the Trust Company, the case was submitted and argued before the Master?

Mr. Rosenberger: My recollection is the testimony was completed before Master Douglass about April 1, 1906. I am very definite in my recollection that the case was argued orally before the Master on all the issues involved in July, 1906, and was taken under advisement by the Master on briefs, on the arguments and briefs thereafter to be furnished, which were furnished later.

Mr. Smith: One of the briefs was filed by you as late as 1907, was it not?

Mr. Rosenberger: That is my recollection. I think it was in 1907.

Mr. Smith: Didn't you file a brief just before Mr. Mecartney was discharged?

622 Mr. Rosenberger: That is not my recollection. The exact date of my last brief that I filed, according to a

recollection I have—I don't think I am mistaken about it—was February, 1907.

Mr. Smith: Now, Mr. Rosenberger, this conversation that you and I have had here may go in as part of the facts with reference to that submission?

Mr. Rosenberger: Yes.

Mr. Smith: I offer from page 344 of the Mecartney record in the Supreme Court of Missouri, the second and third questions and answers on that page; and also in that same connection the questions and answers appearing on the bottom of page 1194 and at the top of page 1195 of that record.

Mr. Rosenberger: I object to it as an attempt to retry the issues adjudicated in the suit of Mecartney against the Guardian Trust Company; and also as irrelevant to any issue in this case and as having no probative value; and as hearsay.

The Master: The objections are sustained.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Mr. Smith: You will admit, Mr. Rosenberger, that the portions that I have offered here appear in that record?

Mr. Rosenberger: I don't know. I want to say if parts of that record are offered and excluded and then brought into this record, fragments of Mr. Mecartney's testimony, I reserve the right in making up the record to show the whole testimony on that subject as part of the excluded testimony.

Mr. Smith: I think if that is going to be done it ought to be done now because I want to see them. I have been able to find no other testimony touching that point.

The Master: It is a matter of fact that what he was talking about, as I understand, what Mr. Smith is trying
623 to show, is what he stated as to what he thought the courts had decided about taxing fees as between solicitor and client?

Mr. Rosenberger: I want to make my position clear to the Master so he will know, and the court will know, when the time comes to make any record on appeal that wherever there is offered from the abstract of the record in the Mecartney suit fragments of evidence, oral or documentary, and such evidence is excluded, that I reserve the right to put in any

matter which may explain anything that is in there. I am not going to get myself in the position of offering testimony and proceedings in the Mecartney suit. I will confine myself to the offer of the record proper, but if in the course pursued by the other side, it is going up on appeal it is not going up on a partial record. It is going up on such record as will fully set forth such parts as we may deem material on excluded evidence.

Mr. Smith: Just a moment on that: this is a hearing before the Master to determine the evidence that is to be considered by the Master and I insist that if there is any evidence that is to be offered, any record, that it be offered here and now so that we may know what it is that is going in, and make our objection to it.

Mr. Rosenberger: I say that is a matter that is going to be controlled by law, as to what constitutes the proper part of the record. I don't think it is proper for him to offer parts of this record without bringing it all in, matters of testimony and matters of exception. The record proper I offered myself; that is, certain parts of it sufficient to show the bringing of the suit, what was in issue in the case and judgment in the case. That is all I have offered and all I intended to offer. He is offering here and there testimony in the case.

Mr. Crane: The Master announced at the beginning of the hearings and during the hearing that he did not propose to retry the Mecartney case; that is, case or cases, meaning thereby the cases that Mecartney had brought against the Guardian Trust Company and which have ripened into
624 judgments. We now on behalf of the Southern Company and Cambria Company request, insist and demand that the Master permit us to introduce evidence going to the question of the reasonableness of the fees of Mecartney in this Cambria litigation.

The Master: As fixed by the judgment, you mean, reasonableness of the fees?

Mr. Crane: Reasonableness of the fees for services rendered by him irrespective of the judgments, to the end that we may have the Master pass upon and determine the reasonableness of those fees, regardless of the judgment, our position being that in any event we are not liable for more than reasonable fees and that judgments in cases to which we were not parties and were not called upon to defend or not notified that we would be bound by the judgments in those cases, are

not controlling and conclusive against us; that the question of their reasonableness still remains open. Our position furthermore is, that in the event the Master should find he was bound by this ruling and memorandum opinion of Judge Van Valkenburgh's, to wit: the fees, costs and expenses that may be charged are such as have already been liquidated and determined, the former almost entirely at the end of contested litigations in courts of last resort. That that language of Judge Van Valkenburgh is disclosed by this hearing is erroneous. We contend that the hearing here held develops that those fees have not been liquidated and determined. Referring especially to the case of Mecartney against Trust Company, reported in the Supreme Court of Missouri, it now appears that there was no liquidation of his fees earned in this Cambria litigation, but that was a judgment covering those fees and other fees. That Judge Van Valkenburgh's memorandum opinion is in error, therefore, in saying that they have been liquidated. We insist that the reasonableness of the fees cannot be determined except by a hearing which will show what is reasonable in the Cambria case and what is reasonable in other cases. We are asking in view of what has developed in this hearing, not that we be permitted to
624 introduce merely specific questions and answers touching the matter, but all of the testimony applicable thereto, so that the Master may consider as an issue to be determined by him the reasonableness of those fees independent and outside of these judgments referred to in the memorandum opinion. I mean by all the evidence showing his handling of the litigation, the mistakes and errors committed by him, as we claim, the whole of his course and handling and services rendered in the matter, so that, as I said before, we may have your independent judgment on what is reasonable for his services in this case. In other words, we demand that you now, in the light of what has developed in this hearing, try that proposition as an issue here. And we say that if you hold that the memorandum opinion does not permit you to try that as an issue, then it now develops by the course of this hearing that this memorandum opinion is in error in that regard on the facts as disclosed.

And we make this demand and insist further, in view of the fact that it appears there were two sets of attorneys handling this Cambria litigation for the Trust Company and we are being required to pay for all of those, are being called upon to pay for all of those, and preparation that each one had to make and acquaintance they had to get to handle the case, which we contend is not reasonable and just and not right

and, therefore, again, for the purpose of determining what is a reasonable fee, if we are liable for any on the ground of taxing costs between solicitor and client, you must try the issue as to the reasonableness and not undertake to be bound by the judgments.

And further, I want to state as our contention, that we insist and contend that the order appointing the Master itself requires that you make a separation of attorney fees as between what would be reasonable charges for the Trust Company in the defending against the action brought by the Cambria Company and the Southern Company and the Belt Company and its receivers as contradistinguished from the fees incurred by them in asserting their claims against the Southern Company for the amount ascertained to be due after the accounting had been had; and in order to follow the
626 court's direction in this regard it becomes necessary for you to try out as an issue the reasonableness of these fees covering the whole of the controversy on which costs might be taxed as between solicitor and client, if any be taxed.

Mr. Crane: Is there any objection to my offer?

Mr. Rosenberger: That objection has been repeatedly made. I object not only to the granting of leave to put in that line of evidence, but also to the statements made by counsel lest it be said, as it so frequently is, that when those assertions were made no reply was made thereto.

But reference has been made to the fact that the Trust Company during many years of this litigation had three sets of attorneys. If they were permitted to mitigate their liability from that fact, we would claim the right to show why it became necessary for the Trust Company to change its counsel from time to time and you would be required to go into the whole scandalous mess which resulted from the Kansas City Southern Railway Company putting in its own paid agent, Prescott, in control of the Trust Company and having relations with Prescott. It would become necessary for us to show how it was that Prescott got lodgment in the affairs of the Trust Company and that while there he was consistently and persistently serving the interests of the Southern Company, which had put him there. Now I don't believe the Master wants to go into all of that scandal and if they were permitted to do that and if those statements were not to go unchallenged as to these frequent changes of counsel, which were the direct result of the employment of Prescott in the

management of the litigation, why, then, of course, we would practically have to retry an issue which has frequently been ventilated in the various suits in connection with the Guardian Trust Company. It was ventilated in the Mecartney suit against the Guardian Trust Company, decided by the Supreme Court of Missouri. It was again ventilated in connection with Mr. Mecartney's suit for services rendered subsequent to his discharge in March, 1907 or 1908, decided
627 by the United States Circuit Court of Appeals, in which they quoted with approval the terrific denunciation of the Supreme Court of Missouri of the conduct of Prescott and the Kansas City Southern Railway Company.

Now I say that because the assertion has been made here ironically about these several changes of counsel, and I don't care to let that statement go unchallenged. But my plain and simple objection to this testimony is that which I have repeatedly made at these hearings, that to receive it by the Master would be going contrary to the order appointing him; that it appears here that the judgments referred to in the offer were rendered at the end of contested litigation, vigorously contested litigation, and that the Trust Company was required to pay those judgments or else submit itself to execution. I think the court plainly indicated those matters are not open to inquiry in this case, and I object to it as irrelevant to the issue on trial.

Mr. Crane: As long as Mr. Rosenberger has made the assertion with regard to Mr. Prescott's employment by the Guardian Trust Company I want it to appear that we deny, as emphatically as we possibly can, his statement that Prescott was the paid agent of the Kansas City Southern Railway Company, or that that railroad company had anything whatever to do with his employment by the Guardian Trust Company. In other words, we don't assent for a moment to that statement and we want in this record to say our denial is complete and emphatic.

Mr. Moore: Also his statement about the scandalous proceedings. We deny all that in every part so far as we are concerned.

Mr. Smith: Let us put in here, as Mr. Rosenberger has stated by our remaining silent, it may be taken somebody is assenting to something, or acquiescing, let it be put in this record that any statement that counsel have made by way of objection, or by way of argument, in the representation of his client, is not admitted in any manner by adversary counsel,

or the opposing counsel. We haven't sought when Mr. Rosenberger has made these statements to start a controversy on these various things, because we never supposed for a moment that anybody would consider that we were
628 accepting those statements as statements of fact and we don't want it understood either as against us or as against him.

The Master: The Master is not going to retry the Mecartney case, as he has already announced, considers himself bound by the order of the District Court and the memorandum opinion. The Master has previously said that if you could show by the record in the Mecartney case that any part of the judgment for legal services of Mr. Mecartney and his assistants and associates was for services that had no connection with the Cambria litigation and can show what they amounted to, it would be permitted.

Mr. Crane: Our position in regard to that is, that it is impossible to do anything of that kind, in view of the facts that the judgment embraces other matters, without showing a trial of the issue of the reasonableness of his fees in the Cambria case.

The Master: The Master takes the view that the final judgment as rendered by the Supreme Court of Missouri for those services and, therefore, paid on compulsion by the Guardian Trust Company, must be at least a prima facie showing that those services were rendered in that litigation.

Mr. Crane: Well, it is our position that the services, the reasonableness of the value of the services to be ascertained, is the reasonableness of the services, value of the services, rendered in this case, this Cambria case, and not in some other case and our position is that is the only way that you can separate the items and ascertain what should be charged in this case.

The Master: The objection will be sustained.

To which last action and ruling of the Master in sustaining the last foregoing objections, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Thereupon the Cambria Steel Company and the Kansas City Southern Railway Company rested their case.

629 On Monday, February 18, 1924, at two o'clock P. M. the hearings were resumed before the Special Master, and the following proceedings were had.

The Guardian Trust Company, in support of a supplemental claim, filed with the Master, introduced the following oral and documentary evidence, to-wit:

H. B. LEAVENS, recalled as a witness on behalf of the Guardian Trust Company, testified in substance, as follows:

Mr. Smith: If the Master please, on the filing of this supplemental claim, I would like to have it understood that this supplemental claim is subject to all of the motion, petitions and objections addressed to the original statement and that we may be understood as objecting to all of the evidence in support of the items on the supplemental account on the grounds stated in the objections to the original account.

The Master: I have no doubt Mr. Rosenberger will stipulate to that effect.

Mr. Rosenberger: That is perfectly agreeable.

The Master: It is so stipulated.

Mr. Rosenberger: Referring to a disbursement made in June, 1905, to Wash Adams, it is my recollection that that item, being one for $6,000.00 as stated in this account filed with the Master, refers to a voucher number 908 and that such voucher is missing. The item of charge on the account refers to the Guardian Trust Company's cash book page 119; have you got that cash book with you?

Mr. Leavens: I have.

Mr. Rosenberger: Will you please examine it and state whether it shows any disbursement of $6,000.00 to Wash Adams on or about that date, and, if so, read the entry to the Master.

Mr. Smith: I want to ask Mr. Leavens a question before he answers it, so I can make an objection.

Mr. Rosenberger: Mr. Leavens, you did not make this entry?

Mr. Leavens: No, sir.

630 Mr. Rosenberger: You know nothing about it at all except as you find it in the book?

Mr. Leavens: That is correct.

Mr. Smith: I object now to this evidence of this witness about the item and I object to the book, because it has not been shown that the person who made the entry had any knowledge of the facts.

Mr. Rosenberger: It is shown by the witness Willey that those books were kept in the regular course of business and are part of the books of the Guardian Trust Company.

The Master: What book is this? What is it denominated?

A. This is the cash book of the Guardian Trust Company opened I think at the period when the Guardian Trust Company receivership of Wash Adams and Judge Black ended and the book was turned back about October, 1902.

The Master: Is the entry book about which you are testifying, is it transferred to some other book or is this the book of original entry?

Mr. Smith: The Master understands I am not disrepectful in this objection, but I want to make an objection to that question, because the evidence in this case has been that Mr. Adams was employed prior to that time and, therefore, it could not be a book of original entry in the sense of being a statement incident to his employment.

The Master: The Master didn't mean that. What I want to ascertain is if it shows that the entry was made on this or whether it was an entry copied from the journal or ledger or some other book.

A. It was made in the cash book before it would appear in the ledger.

Mr. Smith: Mr. Leavens, you just make that statement from your assumption that would be the natural course of business?

Mr. Leavens: From my knowledge of booking.

The Master: Well, would it be made in the cash book first or would it be made—you say it would be made in the cash book before it would be made in the ledger? Made in the cash book before made in the [made in the] ledger, if
631 they had a journal?

Mr. Leavens: I don't think entries of this sort were made in the journal at that time. I cannot conceive of any place where it was made before it was made in the cash book.

The Master: This book you obtained from the regular files of the Guardian Trust Company in your position as the custodian?

Mr. Leavens: It is part of the business items of the Guardian Trust Company.

Mr. Rosenberger: And what are your present relations with the company?

Mr. Leavens: I am employed by the receiver of the Guardian Trust Company.

Mr. Rosenberger: Has the custody of these books been turned over to you by the receiver?

Mr. Leavens: Nothing has ever been said directly to that point, I have access to all those books and go to them, or those books, their archives and go to them if necessary; you might ask the receiver himself, he knows most of them.

Mr. Rosenberger: Where are they kept?

Mr. Leavens: This book I first saw in the office of the receiver in the Fidelity Building. These books were there when I came into the office.

The Master: Now what is the ground of your objection?

Mr. Smith: I am objecting to this, because the transaction is of such a character that I think it cannot be shown by the book entry; that it requires some positive evidence of some person who may give some information with reference to the character of the service and on what branch of the Guardian Trust Company's litigation the services were rendered.

The Master: Standing by itself, I would overrule the objection. I think the entry is admissible for what it is worth and probably Mr. Rosenberger expects to supplement, or he may have already supplemented, it by some showing
632 of what the character of service Wash Adams rendered, on what matters.

Mr. Rosenberger: That has already been shown by other witnesses.

The Master: The objection will be overruled.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Mr. Rosenberger: You may now read the entry, Mr. Leavens, on the cash book.

Mr. Leavens: Under date of June 21, 1905, charges for legal expense item from statement Wash Adams' bill, voucher 908; amount $6,000.00.

Mr. Rosenberger: Did that entry refer to an entry on the Trust Company ledger?

Mr. Leavens: Yes; it is posted, Item is posted to account called legal expense on the Guardian Trust Company's ledger.

Mr. Rosenberger: And what page of the ledger?

Mr. Leavens: Page 129.

Mr. Rosengerger: Have you that ledger here?

Mr. Leavens: Yes, sir.

Mr. Rosenberger: Will you find the entry on the ledger where that is posted to?

Mr. Leavens: Yes, sir.

Mr. Rosenberger: Will you read the entry on the ledger?

Mr. Smith: I make the same objection to it.

The Master: The objection will be overruled.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Mr. Leavens: Posted on date of June 21, to this account called legal expense.

Mr. Rosenberger: What year?

633 Mr. Leavens: 1905; and reads, entry reads: "From statement Wash Adams' bill $6,000.00."

Mr. Rosenberger: Now what was the number of that voucher?

Mr. Leavens: 908.

Mr. Rosenberger: Were you able to find that voucher 908?

Mr. Leavens: Haven't been able to find it, no, sir.

The Master: I want to ask; is that the only voucher that is referred to on this original claim, one that is missing?

Mr. Rosenberger: That is my recollection.

The Witness: I could not tell; I don't know.

Mr. Rosenberger: Are you able to state as a bookeeper whether, as shown by the cash book and ledger, which you have produced here, that that $6,000.00 appears by the Trust Company to have been paid out?

Mr. Leavens: It is posted; in my own mind that $6,000.00 was paid to Wash Adams, or the entry would not have been here in the book.

Mr. Rosenberger: But what I am getting at is, does that show that a disbursement or does it show a receipt?

Mr. Leavens: Well, it shows a disbursement. It wouldn't appear here in the cash book if it hadn't been a disbursement.

Mr. Rosenberger: That is what I am getting at. Referring now to Item No. 441 on the supplemental claim of the Trust Company, dated February 14, 1924, and filed with the Master, relating to the $3,500.00 payment to Wollman, Solomon & Cooper, I will ask you, Mr. Leavens, if you have brought with you voucher number 145 of the Guardian Trust Company referred to in this claim?

Mr. Leavens: Yes, sir, I have it here.

Mr. Rosenberger: Please produce it.

(Said voucher No. 145 is here produced by the witness.)

Mr. Rosenberger: Is it a duplicate original?

Mr. Leavens: The voucher is marked duplicate, but attached to it is the receipt of Wollman, Solomon & Cooper, which appears to be the original receipt.

634 Mr. Rosenberger: We offer in evidence Voucher No. 145.

Mr. Smith: I object to it for the additional reason to the reasons or grounds heretofore preserved that it does not appear from the voucher that the charge made had anything to do with this litigation or that this litigation had anything to do with the voucher or services rendered.

Mr. Rosenberger: I expect to show that by other testimony.

The Master: In view of counsel's statement that he expects to show by other testimony what special service was performed by Wollman, Solomon & Cooper for which this voucher was issued, the objection will be overruled.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Said voucher of the Guardian Trust Company, No. 145, last above received in evidence by the Master, is in words and figures as follows, to-wit:

Voucher No. 145.

"Accounts Payable"

To the Treasurer Guardian Trust Company,

To Wollman, Solomon & Cooper, Dr. Address.

Oct. 8, 1902 For in full for professional services as attorneys & Expense rendered & expended to & on a/c of the receivership of Guardian Trust Co. paid under order of Court filed 10/6/02....$3500.00

I certify that the above is a true copy of an original account duly authorized; that the same has been examined by me and found to be correct and is hereby approved for payment.

Approved and Countersigned.

.....Secretary. F. C. S. Asst. Gen'l Bookkeeper.

Received 189.. of the Guardian Trust Company Thirty-five Hundred & 00/100 Dollars, in full for the above account. $3500.00 See Receipt Attached.

Please return this voucher to Guardian Trust Company, 7th and Wyandotte Streets, Kansas City, Mo.

The following appears on the back of said voucher:

"Wash Adams, Receiver, Accounts Payable. Record No. 145, $3500.00. Receipt of Wollman S. & Cooper, Address.... Treasurer's No. 2861. Distribution Liab. settled $3500.00. Date of Voucher Oct. 8. 1902."

635 Attached to said voucher following receipt of Wollman, Solomon & Cooper:

"We the undersigned firm of Wollman, Solomon & Cooper, attorneys at law, do hereby acknowledge that Wash Adams, Esquire, as receiver of the Guardian Trust Company has this day paid to us the sum of Thirty-five Hundred Dollars ($3500.00) being the amount allowed us by Judge Thayer in

his order dated October 4th, 1902, discharging the receiver of said Guardian Trust Company.

This $3500.00 is paid us and accepted as full compensation for our professional services and expenses rendered to the said Receiver, Wash Adams, and to his predecessor in said receivership, Francis M. Black, and also for all services rendered to the said Guardian Trust Company itself during the time of said receivership.

Oct. 8th, 1902. WOLLMAN, SOLOMON & COOPER."

Mr. Rosenberger: Now taking up Item No. 442 on the supplemental account, referring to payment of $1500.00 to Wollman, Solomon & Cooper, and referring to Voucher No. 489, which the claim recites is missing, I will ask you if you made search for Voucher No. 489?

Mr. Leavens: I did and it wasn't in the file of old vouchers.

Mr. Rosenberger: Did you make diligent search?

Mr. Leavens: I did.

Mr. Rosenberger: Were you able to find it at all?

Mr. Leavens: No, sir; the voucher is gone.

Mr. Rosenberger: Did you find any entry on the books of account of the Guardian Trust Company of January, 1904, in relation to the entry of $1500.00 disbursement to Wollman, Solomon & Cooper?

Mr. Leavens: I find an entry on the cash book here under date of January 24, 1904,—

Mr. Smith: (Interrupting) Just a minute, Mr. Leavens; I object to the entry, for the same reason or on the same grounds as the objection made to the entries in reference to Item 109.

The Master: The same cash book, Mr. Leavens?

636 Mr. Leavens: The same cash book.

The Master: The objection will be overruled.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Mr. Rosenberger: Will you please read that entry?

Mr. Smith: I also want it understood that in addition, I make the same objections as I made to Item 441 and that those objections may apply to this 442.

The Master: It will be so understood.

Mr. Rosenberger: Please read the entry.

Mr. Leavens: This is under head of "Claims prior to Liquidation"; under date of January 20th, 1904, "Cash Settlement of Wollman, Solomon & Cooper for legal services in full $1500.00".

Mr. Rosenberger: Does that refer to the ledger entry?

Mr. Leavens: The posting number here I will get (examining book). Yes.

Mr. Rosenberger: On what page of the ledger does that cash book refer you?

Mr. Leavens: Wait just a moment. I made a mistake. I was looking first for the ledger, I was reading by mistake at that time from my ledger and not the cash book entry.

Mr. Rosenberger: Well, read the cash book entry.

Mr. Leavens: Under date of January 20, 1904, charged to claims "prior to liquidation". "Full settlement with Wollman, Solomon & Cooper for legal services Voucher 489, $1500.00".

Mr. Rosenberger: Now is that entry posted into the ledger?

Mr. Leavens: That entry is posted into the ledger I have here; charged to account called "Claims prior to Liquidation".

Mr. Rosenberger: Read the ledger entry.

Mr. Leavens: "January 20, 1904, Cash Settlement of Wollman, Solomon & Cooper for legal services in full
637 $1500.00".

The Master: What is the page of the ledger you gave?

Mr. Leavens: Ledger page 100.

Mr. Rosenberger: Is that the entry that shows disbursement of that amount to Wollman, Solomon & Cooper?

Mr. Leavens: It certainly is.

Mr. Rosenberger: Now taking up Item No. 443, being in amount $1777.51 paid to H. S. Mecartney, and referring to Voucher No. 802, did you at my request hunt up the voucher?

Mr. Leavens: I did, I have it here.

Mr. Rosenberger: We offer in evidence, Voucher No. 802.

Mr. Smith: I object to the voucher, for the additional reasons that it appears on the face of the voucher that the item for services was for making a report to the Trust Company of litigation which had theretofore been in the hands of counsel and that if any charges may be made for attorney fees in this case, it would not be right or proper to charge as costs the expenses of the duplication of services of counsel growing out of the conduct of the Trust Company in changing its counsel from time to time and thereby increasing and duplicating the work. I also object to it because on its face it shows that it included traveling expenses as the result of the Trust Company employing Chicago lawyers to take care of Kansas City litigation; and I also object to it because the voucher on its face shows there is included in it a substantial item for printing a report which is not a proper charge to make against this litigation in any event.

The Master: Mr. Rosenberger, I understand that this item was not included in Mr. Mecartney's claim for which he sued in the Supreme Court of Missouri?

Mr. Rosenberger: Your understanding is correct, as the petition in that case will show.

The Master: The objection will be sustained.

Mr. Rosenberger: On what ground, if the Master please.

The Master: Well, the Master has already announced he cannot try the Mecartney case; and he includes in this
638 voucher fourteen trips to Kansas City and Chicago and also quite a substantial item for printing a report and I don't feel that this is such an item as appeals very strongly to the Master as a proper one to allow for disbursement between client and counsel. It is under paragraph two, isn't it?

Mr. Rosenberger: I think the Master and I are at cross purposes. Did you understand me to say, as I did, that every item in that account is an item not included in any amount recovered by Mr. Mecartney in his suit against the Guardian Trust Company?

The Master: Yes.

Mr. Rosenberger. If it is not included in that account, I cannot understand on what theory the Master excludes it, where it has never been charged against the Southern Company in any item of the account already under consideration. If you are undertaking to exclude it on the ground that it was not a legitimate expense incurred by the Guardian Trust Company in this Cambria suit, why, that is a matter that arises on other evidence not yet offered. The only purpose now is to show that that disbursement was made, not what it was for; and the Master would be prejudicing the item to exclude it on such ground as last indicated by him. Supposing that in the year 1910, after the period for which he recovered compensation, the Trust Company had re-employed Mr. Mecartney and paid him money for taking care of the matter—as in effect it was held in the subsequent litigation that took place in St. Paul, and in the Appellate Court, is the Master going to exclude that? What the Master is sitting here to do is to determine what expense the Trust Company was subjected to by reason of this litigation. Now here is expense for inquiring into the status of litigation and getting the Trust Company a report thereon.

The Master: Part of your argument appeals to the Master, that is your statement that the Master is sort of prejudicing this item at the present time.

Mr. Rosenberger: Why, yes, I think so.

The Master: I think perhaps it would be true that probably the judgment of the Master may be slightly prejudiced, but the fact is he has said that for economy of
639 time and for various other reasons, because he feels himself that an item which has been paid by the Guardian Trust Company after a long contest in the Supreme Court of Missouri and after a final judgment has been rendered precludes the Master from going into the reasonableness of those items and may have caused him to somewhat prejudge that offer and Master thinks that it would be more appropriate to admit the evidence for what it is worth at this time.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Said voucher No. 802, above received in evidence, by the Master, is in words and figures as follows, to-wit:

Voucher No. 802.

"Accounts Payable. 802.

To the Treasurer
Guardian Trust Company

To H. S. Mecartney, Dr.
Address Chicago, Ill.

Jan. 14, 1905.

For services examination or report on pending litigation with K. C. Suburban Belt Co. and Port Arthur Channel & Dock Co. $1500.00

Traveling & other expenses 277.51 $1777.51

I certify that the above is a true copy of an original account duly authorized; that the same has been examined by me and found to be correct and is hereby approved for payment.

Approved and countersigned.

.....Secretary. ..... Asst. Gen'l Bookkeeper.

Received 1/17/05 of the Guardian Trust Company, Seventeen Hundred Seventy-seven & 51/100 Dollars in full for the above account.

$1777.51 H. S. MECARTNEY.

Please return this voucher to Guardian Trust Company, 7th and Wyandotte Streets, Kansas City, Mo."

The following appears on the back of said vouchers: "Accounts Payable, Record No. 802. $1777.51. Receipt of H. S. Mecartney, Address Chicago, Ill. Treasurer's No. ..... Distribution. Expense $1777.51. Date of Voucher Jan. 14, 1905."

Attached to said voucher is the following statement:

"Telephone Central 690.

Chicago, December 6, 1904.

Guardian Trust Company,
H. S. Mecartney, Dr.
Attorneys and Counselors.

640 John Milton Oliver
Harry S. Mecartney
To cash paid out as follows:

145 LaSalle Street,
Roanoke Building.

1904

Nov.	18	Trunk and express on same with contents	$ 6.85
Dec.	5	Telegrams on October bill	.46
Dec.	6	Four trips to Kansas City, as follows:	

1st trip		
Fare, berth, hotel and meals		29.00
2nd trip		
Fare and berths (self and asst.).	$60.00	
Meals	10.00	
Hotel	15.00	85.00
3rd trip		
Fare and berths	30.00	
4th trip		
Fare and berths	30.00	
Meals, hotel and telegrams	6.80	36.80
To public stenographer copy of Cambria Steel Co. Bill		7.50
To Barnard & Miller, law printers, printing report on claims Guardian Trust Company against K. C. Sub. Belt Ry. Co.		75.00
		$277.51
To services investigating merits of pending litigation with Suburban Belt Co., Port Arthur Channel & Dock Company and others,		1500.00
		$1777.51."

Mr. Rosenberger: Is this voucher you have produced, an original voucher?

Mr. Leavens: It is.

Mr. Rosenberger: On file among the records of the Guardian Trust Company of which you have charge?

Mr. Leavens: It was, yes, sir.

Mr. Rosenberg: Found in the place where it belonged?

Mr. Leavens: Found in numerical order in the files.

Mr. Rosenberger: In connection with the charge made for the Mecartney report and referred to in Item No. 443 on supplemental account covered by the voucher last introduced in evidence, I offer in evidence all that part of the minutes of the meeting of the executive committee of the Guardian Trust Company held November 4, 1904, which bears on the Mecartney matter and which I shall read, giving op-

posing counsel the privilege of reading any other
641 portion which he may consider as relevant to that subject.

The Master: You are reading from the record of what suit?

Mr. Rosenberger: Those minutes appearing on record in Volume 3 in the Shedd case, page 2379:

"Kansas City, Mo. Nov. 4, 1904.

Pursuant to adjournment, a meeting of the Executive Committee was held under the call of the Chair, Friday, November 4th, 1904, at the office of the Company in Kansas City, Mo., the full committee being present. The minutes of the meeting of October 26th, 1904, was approved as read"—

Mr. Smith: (Interrupting) Now just a minute: I want to object to these minutes that Mr. Rosenberger is reading.

Mr. Rosenberger: Just a minute, please: I want this to go into the record, and not all chopped up, because it is going into the record no matter if your objection is sustained or not. Now after I have offered it, it can be objected to and moved to be stricken out, but I would have to start all over again and that would unnecessarily multiply the record.

Mr. Smith: I want to preserve my rights, I want to object to that because the minutes of the Guardian Trust Company are self-serving declarations and not binding upon us.

The Master: As to the entire claim?

Mr. Rosenberger: Yes, sir.

Mr. Smith: I object to it as hearsay as to us.

Mr. Rosenberger: The Master is inquiring into what expense and when the Trust Company incurred this expense and here is a corporate record, as much so as the books of account, as to the circumstances under which this expense was incurred.

The Master: The objection will be overruled.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Mr. Rosenberger: (Reading) "Kansas City, Mo., Nov. 4, 1904.

642 Pursuant to adjournment, a meeting of the Executive Committee was held under the call of the Chair, Friday, November 4th, 1904, at the office of the Company in Kansas City, Mo., the committee being present. The minutes of the meeting of Oct. 26th, 1904, were approved as read.

* * * * * * *

"Mr. Mecartney, an attorney from Chicago, who accompanied Mr. Shedd to Kansas City at his request, was, upon the suggestion of Mr. Shedd, invited to attend the meeting. Mr. Mecartney was here introduced to the members of the Committee, and in general conversation the matter of our litigation with the K. C. S. B. R. R. was taken up. Mr. Mecartney stated that he thought he could review the case sufficiently to be able in about two weeks to advise the Committee as to what, in his opinion, might be the result of the litigation, and advise as to what action sould be taken and also determine as to whether he could take charge of the matter if it was so desired by the Committee.

"Whereupon, on motion of Mr. Bradbury, it was voted, that Mr. Harry S. Mecartney, attorney, be employed by this committee to look into the claims of the Guardian Trust Company, vs. The K. C. Suburban Belt R. R. Co., with the view of furnishing this committee with this legal opinion in writing as to the amount we can reasonably expect eventually to recover providing no compromise be had."

* * * * * * *

"Meeting was adjourned subject to call of Chair."

Mr. Rosenberger: I next offer in evidence the following extract from the minutes of the Executive Committee of the Guardian Trust Company, held December 7, 1904, appearing at page 2386, Volume 3 of the Shedd record.

Mr. Smith: It is understood all of this evidence is subject to the objections heretofore made?

The Master: It will be so understood.

Mr. Rosenberger: (Reading): "Kansas City, Mo. Dec. 7, 1904.

"Under call of the President, a meeting of the Executive Committee of the Guardian Trust Company was held at the Company's office in Kansas City, Mo., December 7th, 1904.

643 "Present, Harris, Shedd, Prescott, Heynecker and Willey."

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"Mr. Mecartney was invited to present his proposition as to employment by this Company as counsel in the cases of this Company vs. the K. C. Suburban Belt R. R. and Port Arthur Channel & Dock Co.

"Mr. Mecartney presented his opinion as to the cases in printed form and verbally in a general way his ideas as to the action that should be taken in the matters in question, and offered the following proposition as to the employment as counsel."

Here follows his proposition with which I think the Master is familiar.

The Master: What page is that?

Mr. Rosenberger: Page 2386.

Mr. Smith: And the one on which he made his proposition, is that page 2386 also?

Mr. Rosenberger: Yes.

Mr. Rosenberger: (Reading) "Mr. Mecartney presented his bill for services and expenses in his review of the cases as submitted in his printed report, including a reasonable number of such printed reports. Services, $2000.00, Expenses $277.71. Mr. Mecartney having withdrawn from the meeting, his proposition as to employment as counsel in the litigation in question and his bill for services and expenses in review of the cases as submitted in his printed report, was the subject of general discussion, and after quite an extended time so devoted to the matter, Mr. Mecartney was again invited to present himself and after discussing the matter with the Committee and making explanations in answer to some questions by various members of the Committee, he stated that in consideration of the proposal to employ him as counsel to carry on the litigation, he would amend his bill for services in the review and report upon the matters in question to read $1500.00 in place of $2000.00, so resulting in said bill for services and expenses being a total sum of $1777.51 instead of $2277.51.

644 "Whereupon on motion duly made, it was voted that the sum of $1777.51 be paid Mr. Mecartney in full for such services and expenses."

Mr. Rosenberger: I now offer in evidence Mr. Mecartney's report referred to in these minutes, dated, Chicago, December 1, 1904, and entitled; "Report upon claims of Guardian Trust Company against Kansas City Suburban Belt R. R. Co. and others by Harry S. Mecartney", appearing at pages 556 and following of the record in the suit of Harry S. Mecartney vs. Guardian Trust Company, this offer being made solely for the purpose of showing the general nature of that report charged for and paid by Voucher No. 802, heretofore introduced in evidence.

Mr. Smith: Now I object to that report, for the reasons hereinbefore given; and also for the reason that it is a long dissertation on this law suit and Mr. Mecartney's views of the world in general and is an unnecessary, expensive encumbering of the record in this case; no occasion for putting it all in this record.

Mr. Rosenberger: I think counsel is inconsistent. He first objects on the ground that the disbursement was not [unecessary]. Now this report shows on its face, its general nature and why it was necessary and shows the nature of the services rendered and yet when I offer to show what services were rendered, which are shown by the report, the amount of labor that was put upon it so as to justify it as an expense, and its necessity for the Trust Company, it is objected to on the ground it is a long dissertation.

Mr. Smith: I stick to the objection with just as much vigor as before. I suggest if Mr. Rosenberger is going to try this law suit on costs and the question of value of services rendered he might as well suggest putting in all the record in the original case and all the record in the Mecartney case and all the record in the Trimble & Braley cases.

Mr. Rosenberger: I have explained the theory of my offer, which was for the purpose of showing this charge of $1770 odd dollars, which is not included in the trial of
645 any litigation heretofore had between Mecartney and the Trust Company.

The Master: Only for the reason that it may throw light on the propriety of this item of 1770 odd dollars, it will be admitted, and the objection will be overruled.

To which action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Said report of Harry S. Mecartney is in words and figures, as follows, to-wit:

"Report Upon Claims
Of
Guardian Trust Company
Against
Kansas City Suburban Belt R. R. Co.
And Others
By
Harry S. Mecartney.

Chicago, Dec. 1, 1904.

To the President and Executive Committee of the Guardian Trust Company.

Gentlemen: Acting under a resolution of your Executive Committee passed several weeks ago, I have made several trips to Kansas City, examined thoroughly into the pleadings and testimony of the legal imbroglio with the Suburban Belt and allied railroad companies, and submit below my

Report.

The matters in dispute are covered by the pleadings in the case of the Cambria Steel Company vs. the Kansas City Suburban Belt R. R. Co. and others, and the ancillary bill filed by Messrs. Knott & Swinney as receivers of said Belt R. R. Co. and its subsidiary companies against the Guardian Trust Company and others, pending in the Federal Circuit Court at Kansas City.

It seems that this litigation started in September, 1900; that the taking of testimony commenced only about two years ago on the part of the receivers and their testimony is not yet completed.

In the ancillary bill (a species of cross-bill), which is
646 the basis of the principal attack upon the Guardian Trust Co. and under cover of which the claims of the Guardian Trust Co. vs. the Belt and said other companies (amounting with interest to nearly $500,000.00) are resisted, the receivers seek to have an accounting between the Trust Company and the Belt Railroad companies, and to have the court inquire into the history of all their mutual dealings and negotiations, as well as all their accounts extending over a period of many years and covering the entire existence of the Trust Company.

Brief History in Outline.

The Kansas City Suburban Belt R. R. Co. was organized in January, 1887. For several years, it struggled along in attempts to build portions of its road, but did not succeed, and it had during this period no particular financial support to its plans.

The Trust Company was organized on February 4, 1889, as the Missouri, Kansas & Texas Trust Co. Its name was changed on July 17, 1899, to the Guardian Trust Company.

Shortly after its original organization and under contract of May 31, 1889, the Trust Company placed a number of bonds of the Belt Company, enabling the latter to build its first 4-½ miles of road, extending from Second and Broadway Streets in Kansas City, Mo., to Cecil Station.

This contract, as were others subsequently made between the companies, was voted by the Directors of the Belt Company and ratified by the stockholders.

Shortly thereafter the Trust Company placed more bonds, enabling the road to build six miles further, viz., south to Brush Creek.

In May, 1891, the Belt Road was desirous of building about two miles further to the west, to the State line between Missouri and Kansas.

The Consolidated Terminal R. R. Co. was organized May 16, 1891, to build this line.

The Guardian Trust Company placed its bonds and stocks.

In July, 1892, the two railroad companies were consolidated, the new company still retaining the name of the
647 Kansas City Suburban Belt R. R. Co.

Another extension of the Belt's line to Independence—about six miles further—was determined upon.

The Kansas City & Independence Air Line Co. was organized January 23, 1891, to build this extension, and the Guardian Trust Company assisted in procuring its franchises and public concessions, etc., and placed its bonds, and received a small amount of money—about $10,400—for the service.

In order to complete the Belt around Kansas City, it was, of course, necessary to build a portion in Kansas.

The Union Terminal R. R. Co. was organized December 28, 1891, for this purpose. The Guardian Trust Company

financed this concern, and placed its bonds and some of its stock.

About 1895 the Kansas City & Northern Connecting R. R. Co. was organized for the purpose of building ninety miles of road from Kansas City to Pattonsburg, to connect with the Omaha, Kansas City & Eastern R. R., which was then almost continuous from Omaha to Quincy, and the 30-mile 'gap' to complete it was constructed about this time.

The Belt Company, being desirous of increasing its customers for the use of its terminals, entered into a contract with said Connecting Company on June 30, 1896, to build said ninety miles of road and to take the bonds and stock of the Connecting Company as consideration for said construction.

The Guardian Trust Company sold the bonds of said Connecting Company for the account of the Belt Company.

The Kansas City Terminal Construction Company was organized in 1889 to build the original Belt R. R. and the Guardian Trust Company in handling the original sale of bonds, dealt with it and on its account. Said construction company was also used to build the six miles of Air Line Road.

During the progress of the construction of the Belt
648 Road and its various extensions, several companies grew up—independent of the railroad company, yet allied to the road after a fashion—such as:

(1) The Missouri Elevator & Terminal Co., organized in December, 1891, which constructed three elevators on the line of the road, the Belt Company ultimately becoming the owner of all of its stock.

(2) The Central Improvement Co., organized for the purchase of the lands along the line of the Belt Road and the Gulf Road. These two companies together held the stock of the improvement Company, and I believe the Trust Company now holds a little of the stock on account of the Belt and as collateral to the claims against it.

(3) The Second Street Improvement Company holding title to certain real estate leased to the Belt Road, but which is entirely foreign to this case, and with which the Trust Company has no concern.

(4) The Northern Town Site Company organized to purchase lands along the line of the Northern connecting Road. The Trust Company holds a little of the stock as collateral to its claims against the Belt.

(5) The Fairmount Amusement Company organized for the purpose of furnishing amusement in Fairmount Park, thus increasing the trade of the Suburban Belt. The Trust Company has a little of this stock as security, but it is generally considered worthless.

The Guardian Trust Company has nothing to do with several of these companies, except that in several instances it advanced moneys at the time of their incorporations, on account of the Belt, and the accounts for such moneys were merged with that of the Belt Company years ago.

The various accounts between the Guardian Trust Company and the various railroad companies were also ultimately merged in one account and carried against the Suburban Belt when it became the owner of all of the stock of said companies, and the accounting now is primarily with the Suburban Belt Company.

One of the principal feeders to the Belt R. R. was the road that was built from Kansas City to Port Arthur and
649 completed in 1897, originally the Kansas City, Pittsburg & Gulf R. R. This 'Gulf' company, as well as the Suburban Belt and its associated railroad companies, went into the hands of receivers early in 1900.

The Cambria Steel Company which had furnished steel rails for building the Northern Connecting Company's road to Pattonsburg, took 'snap' judgments on notes given for its 'rail' accounts, went through the form of issuing an execution and ordering it returned as a basis for an ordinary credtior's bill, and thereupon filed said bill, making the various railroad companies and the auxiliary improvement companies parties defendant thereto, and alleging that the Guardian Trust Company on an accounting would owe the Belt Company (against whom the Steel Comppny's judgment was actually obtained) a large sum of money.

Shortly thereafter Messrs. Knott and Swinney, who had been appointed receivers for the Belt Road and its constituent companies in certain foreclosure suits against the various roads, filed its above mentioned ancillary bill in said suit against the Guardian Trust Company, seeking to attack the relations between the Trust Company and all the dealings it had had with these various companies, whether consummated or not—their entire dealings, in fact, 'past', present and future.'

The ancillary bill in question proceeded upon the theory that the Guardian Trust Company had fathered all of these various railroad schemes and extensions, and, as a majority of the directors of the Guardian Trust Company had, during all the years covering the transactions, been directors of the Belt Company and constituted a majority of its directorate, therefore all the transactions should be inquired into strictly. It was alleged that the Guardian Trust Company had taken advantage of its 'dominating position' over the other companies 'to gather to itself inordinate commissions, charges and profits' arising from the various railroad and other enterprises; that if an accounting were had the Guardian Trust Company would owe the Belt Road a great deal of money and more than enough to offset the notes and
650 claims shown by the books to be due the Trust Company from the Belt.

As collateral to its notes due from the Belt, the Guardian Trust Company has securities estimated to be worth somewhere in the neighborhood of $120,000 or more. It has also realized $40,000.00 by the sale of certain collaterals, which through order of the court has been deposited in escrow to await the final decree in the case. The Trust Company was enjoined by order of court from further disposing of collaterals pending in the inquiry as to the account.

The Kansas City, Pittsburg & Gulf R. R. and the Belt R. R. and its allied roads were in the hands of receivers in 1900, as was also the Port Arthur Channel & Dock Company, a corporation which constructed the terminal to the Gulf Road at Port Arthur and connected it with deep water shipping.

A plan looking to the consolidation of the Gulf Road, the Belt Roads and the Dock Company was put forth by a committee, (frequently called the Philadelphia Committee) on August 17, 1899, for whom Max Pam, of Chicago, was the dominating counsel. The plan was modified and reissued November 7, 1899.

This plan was carried out, the Gulf Road was bought in late in 1900, and the Belt Road and Dock Company assets a little later.

The corporation that bought in these assets, as is well known, is the Kansas City Southern Railway Company and it has now been operating for nearly four years. It is needless to add that the Belt Road's terminal facilities have greatly increased in value since said organization, as well

as the property of the Gulf Road, and the K. C. Southern is in thriving condition.

Under well-known rules of law usual in railroad reorganization cases, the Kansas City Southern Road, having purchased all of the property and assets of the Belt Roads and the Dock Company, received the stock of said companies is liable to pay the debts of said companies; and it is the Kansas City Southern interests that are behind the present attack upon the Guardian Trust Company and its claim.

651 The Guardian Trust Company sued at Beaumont, Texas, for a claim for advances of $21,916.44, which it had against the Port Arthur Channel & Dock Company. This suit was defended by the Dock Company and it set forth in defense similar claims to those now made by the receiver for the Belt Company, questioning all of the accounts with the Trust Company, etc, etc.

The Dock Company, now owned or represented by the Kansas City Southern interests, retaliated by suing the Guardian Trust Company for $1,000,000.00 alleged to be due it by reason of a subscription to the capital stock of the Dock Company.

The subject-matter of these claims and counter claims is treated hereinafter.

The main question here recurs upon the book accounts and transactions between the Guardian Trust Company and the various companies outlined above.

For two years after this Kansas City suit was commenced little, if anything, was done therein. A prominent lawyer, Judge Black, was at that time receiver of the Guardian Trust Company; and it is stated by various people that he had 'hoped' that Mr. Pam, who was then dominating the affairs of the interests adverse to the Trust Company, would 'settle' the matter.

It is stated by several directors of the Trust Company that Mr. Pam, representing the Belt Company, had his expert accountant examine the books of the Belt Company and the Trust Company, and that the expert reported that books agreed with the exception of some minor and immaterial items, and that Mr. Pam at one time promised to pay the balance found due and fixed a date therefor. This was afterwards repudiated by him. It is not revealed on what basis

Judge Black hoped to have Mr. Pam change his attitude; but at all events two years' time was entirely lost by doing nothing.

The basis for the suit's prodigious dimensions is the general theory roughly outlined above—that the Guardian
652 Trust Company was a sort of a parent to all the other companies which it helped in financing—a sort of a guardian angel—and that the trust relationship constantly existed between them, under which in effect said company was the active trustee and the other companies a species of cestuis que trustent; that the Trust Company was a sort of adult guardian, and the other companies mere infants to be looked after by it.

Then the charge is made of a far-reaching scheme that was devised from the first by the Guardian Trust Company to father all these schemes, and by a deliberate process of overcharging, etc. to gather to itself 'inordinate profits', etc, etc.

The Case was referred to Special Master Shannon C. Douglass, who, after the commencement of the taking of testimony, went upon the State Circuit Court bench to fill out an unexpired term, but has lately failed of re-election to the judgeship. The taking of testimony has progressed most of the time in his absence, and at other times his attendance has had, of course, to wait upon the business of the State Court.

Twelve thousand pages of evidence have been taken by the Cambria Company and the receivers of the Belt Road, the moving parties, and they have not yet closed their testimony, and no time has been fixed therefor.

None but the very vaguest suggestions of compromise have been made by the opposition, growing less as time has elapsed, while a definite written offer of compromise and several specific verbal ones made by the Trust Company have been entirely ignored.

It is apparent to the most superficial that, if the temptation had ever existed to use the courts for the purpose of beating off a liability, and by delay consuming a great deal of the substance of the case, the circumstances, as they existed at the commencement of this suit, offered such a temptation.

It is also apparent that the volume of complexity that could easily be evolved from the pleadings in the case, together with other features of the case, would supposedly
653 furnish a very comfortable even if temporary cover for any intent of this kind.

It is easy to cry fraud. It is not so easy to allege fraud when there are no specific facts to show it. When, however, there are relations which might furnish an opportunity for fraud, it is here again made easy to cry fraud.

When, too, financial undertakings fail, and many people are affected by the unfavorable turn in the deal, and indiscriminate condemnation is heard on all hands, it is here again more easy to suspicion and to attack.

I am informed by Judge Trimble (who has kindly assisted me in my investigation) that in the two years of taking of testimony in the case, he has had to fight constantly for the hearings, and that at no time have the opposition crowded the effort to take testimony and get through with the matter.

In order to advise you as to the merits of this claim, I have not pretended to read over all of this 12,000 pages of testimony. It is not necessary, however, to do so, in order to arrive at a fair idea of the merits.

I have examined the accounts, the history of the case, various minutes from the books, and looked carefully over the mass of testimony bearing upon the more important transactions and outlining the course of dealing. This testimony was all been offered by the other side and forms a good basis for investigation of any bona fide defense which they may have. Such a mass of testimony must, of course, consist largely of repetitions and be full of tedious recitals.

The pleadings and admissions of the parties, the course of business and the knowledge of the rules of conduct that usually impel men, together with the facts that the books agree, and that accounts were exchanged between the companies from time to time, are far more important and furnish a better and safer basis for judging of the merits than could
654 a detailed examination of the whole mass of evidence.

The erroneous items discovered in the books are so small and so exceptional that they furnish strong testimony to the fact that through these years of dealing the Trust Company has maintained a strict integrity in dealing with the other companies, and as strict as if it were in fact a legal guardian and others mere infants which needed looking after.

The open or covert threat that there will be years of litigation in store before we are enabled to reach a decree in the case naturally has the effect of making some of our people

discouraged at times, and is apt to tempt them to a very cheap compromise.

Compromise is a big factor in wisely conducted litigation; but there is a point beyond which it ceases to have merit and becomes unwise and weak. There may be a recklessness in compromise that is sheer waste and is invidious.

If we are right in our judgment of the merits of this case, there is no reason for compromise for any sum suggested by the opposition, unless it be the fear that the opposition may delay this inordinately.

What ground is there for this fear?

Are courts not really courts of justice?

Or, are they courts of justice only when claims are simple and accounts few, and both parties are willing, and actually trying, to make a speedy end of the inquiry?

Are suits upon notes given by adult people, acting for themselves or associated as corporations, to be discounted half or more simply because numberless transactions which preceded them and which are displayed upon regularly kept books, and all of which have been closed years before, are sought to be attacked, and ripped open and inquired into and made the basis of numberless tedious inquiries?

I admit that the course of lawsuits in the past and common experience would naturally raise a fear of failure of justice in this case, especially when we consider the breadth of the pleadings and the two years of testimony that has been taken on one side of the case.

655 But I do not see why the Federal Court, or any other court, should be powerless to grant us a speedy determination of this inquiry, and give us an early decree for what may be found due.

Is the reported claim upon the one side that 'the matter will be kept in court six or seven years,' and the fear that exists in the minds of some of the parties interested of the truth of the challenge, well founded?

Ordinary experience, it is true, lends some color to the claim. There have been railroad and other lawsuits that have lasted for such a period and longer. But usually this is due to the want of a settled policy looking towards speeding the cause and a determination not to let anything interfere with its steady progress, and from the non-employment

of methods,—new methods, possibly—suitable to the case and demanded by its exigencies.

The long delay in disposing of complex cases is simply the emphasized result of the habitual looseness that obtains generally in court practice. Besides continuances for other engagements of counsel, and other frequently unimportant reasons, moves in the case are deferred on account of some imagined prejudice or whim of court, master or counsel, and there is a sort of habitual compromising with Time at nearly every step, which seldom if ever pays and always occasions delay.

Complexity spells waste. Complex lawsuits must yield to stringent or 'surgical' methods. 'Justice' must not be sought by as detailed and thorough and tedious examinations of numberless transactions and accounts of years as would ordinarily be applied to single transactions between individuals. Otherwise the substance of a case would be entirely consumed by the efforts and time thus required to extract it, and the net result, even though exceptionally accurate, could not be called 'justice'. It would be far less just than a far less accurate result economically and quickly arrived at.

Usually parties are at fault who have allowed their
656 transactions to get so involved that it would take inordinate labor to thoroughly examine each item as an individual transaction—to require the court not only to examine books, but to practically make the books between the parties; and any loss that might arise to either one from appropriately speedy and stringent methods in striking a balance between them would thus be attributable, at least partly, to each party's own fault. In such involved cases, the court is entitled to protect itself against having its decree result in mere waterhauls, by adopting schedule testimony, by demanding resultant showings and expert opinions, by avoiding inquiries as to completed transactions, etc. etc. Only by such methods of conducting its inquiries is it possible for it decrees in such case to earn the labor of 'justice awarded.'

If, therefore, in the present case it had been right for the court or master to allow the opposition to inquire into all the accounts and transactions which had been made and had transpired between the Guardian Trust Company and these railroad and various other companies from the very organization of the Trust Company down to the beginning of the suit in 1900, a period of over eleven years—nevertheless the

methods of inquiry which allow the taking of the startling volume of twelve thousand pages of evidence on either side or even on both sides, or even the half of it, would seem to be shockingly loose and out of place. This cannot possibly conduce to the attainment of justice, no matter what the ultimate award will be.

A natural and logical scope to useful and legitimate testimony in such case might have been:

A detailed history of the formation of the various corporations, with their general objects and the work constructed by them, their relations to the Guardian Trust Company, a statement of the prinicpal transactions between them, a schedule of events in chronological order, articles of incorporation and other essential exhibits in order; lists of officers of various companies; indices and cross-reference; distributive and resultant showings; copies of the book accounts with expert testimony of accountants; brief oral testimony as to the principal transactions, allowing reasonably thorough cross-examination.

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All of such written data could have been prepared in advance of the hearing, and if the oral testimony had been held within reasonable close bounds, a report and decree ought to have been ground out by the 'mill' long ago, and with far greater accuracy than would accompany attempts to wade through thousands of pages of testimony and volumes of copies and vouchers.

But there was no occasion for the court or master to throw open the door, as had been done, for inquiry ad libitum into all these accounts and transactions, closed and unclosed, completed and uncompleted.

The theory of the attack upon the Guardian Trust Company and upon the accounts interchanged between the companies from time to time (which agree upon the books, by the way) is based upon the mere fact that the Guardian Trust Company had been officered largely or chiefly by the same men who directed the affairs of the Belt and its subsidiary companies. The opportunity thus given, as it is imagined, for one company to enrich itself at the expense of the other seems to furnish a rich suspicion of wrong, and to be the basis of the right claimed by the Belt to test each and every transaction between the companies. This suspicion seems even to have infected the court in awarding the injunction against the sale of collaterals and is the mare's nest in the whole case.

Now, why should the fact that these corporations were similarly officered, let down the bars for endless testimony and unlimited inquiry into the whole history of these companies and of every act that each of them ever performed?

Is it not a common feature of modern corporate life that companies engaged in similar enterprises or distinct features of one general enterprise have a co-operate dominating directory?

658 There are railroad companies and there are construction companies for building the roads; there are gold mine stamp mills, and there are coal mine companies furnishing the chief commodity for their operation; there are railroad companies and elevator companies furnishing a large traffic for the roads; there are large manufactories and there are companies exclusively handling their product; in each of which due of companies directors are sometimes duplicated, frequently as to a majority, sometimes only as to a minority, sometimes entirely duplicated.

Now, in such cases, are the general rules of business and of business conduct, of contracts and their binding effect, of estoppels to question completed transactions, suspended? Or, are the transactions binding only with the proviso that whenever one company or its stockholders or creditors choose to request it the court will hack over every transaction between the two corporations? Such a conception is at once shocking to ordinary common sense, and to all ideas of industrial justice and economy.

As a matter of fact, the progress of our industrial develoepement and the gradual intensifying of our industrial life brings out the principle of co-operation and closer managing authority in industries closely allied or where one industry largely feeds the other. It is all in the interest of economy and is preventative of waste. It is a species of limited corporate partnership.

Such a relation brings greater responsibility to the managers; but, if honestly conducted, the financial benefit to the companies is correspondingly great.

Now, is there no responsibility for such dual management relations between various companies resting upon the stockholders of the companies? Can they consent to and establish such a relationship, make no move to change or disrupt it, take the benefits or advantages accruing from it, and after years of dealings enlist a court of justice in the effort to

rip open all their mutual transactions, and involve the
659 companies, or either of them, in burdensome and seemingly endless litigation? The inordinate advantage which a mercenary stockholder would have in such case, in 'holding up' prospective deals or organizations of the companies, in gaining a position to 'be bought off', or which the one company would have in resisting payment of the amounts due and owing from it to the other, etc., would result in the court becoming used as a tool of oppression, with no corresponding penalty accruing to the instigator of the fruitless inquiry.

In case of such relationships, it is clear that the stockholders by deliberately entrusting the management of their company to a set of officers largely interested in the other, by that act consent to what their judgment may be of what is fair to each in the deals to be made between them; they place special responsibility and take the ordinary consequences; they must be held to closer scrutiny of the transactions and of officers' reports; they must act more quickly than in ordinary cases of alleged fraud or unfairness in dealings between companies dealing at arm's length, or be held to have acquiesed.

Can the Belt Company, having dealt with the Trust Company for eleven years, upon the sole plea of semi-mutuality in office management between the companies lately interposed, and a general charge of a dark, diabolical scheme on the part of the Trust Company, conceived at the outset, 'to gather unto itself unfair and inordinate profits', etc., and with scarcely one specific charge in its complaint, ask the Guardian Trust Company to account with it for all the transactions of their mutual business life?

Were there no account kept between the companies? And, if not, did the complaining company, or its stockholders, diligently move to have them kept?

Were the chief transactions between them of a secret nature?

And, if so, were prompt efforts made from time to time to learn of them and of their terms?

Were not reports to the stockholders of the various
660 companies made from time to time? If so, was there any audible and open claim that these were false? And, if insufficient or too meager, was any effort made to have them made more specific? And if this was refused, was prompt application made to the courts to have the duty enforced?

Was it possible for these companies to do so much in the way of constructing railroads, selling bonds, issuing prospectuses, publishing statements, and the one be enabled to systematically defraud and take advantage of the other, and no complaint be made at any time by any of the adult parties most vitally interested?

I am creditably informed that the filing of the bill of complaint in this case, at the apparant instigation of Mr. Pam, was the first definite complaint, and certainly the first attack upon the dealings, the 'book showings' between these companies. And certainly the bill and cross-bills do not attempt to account for delay in making complaints.

It seems clear to me:

First—That the bill of complaint in this case, and the cross-bills of the Belt receivers asking for an accounting between these companies, should have been demurred to and dismissed upon their face.

Second—That in case the court would not do this, then a plea should have been interposed to that portion of the bill seeking an accounting, beyond some recent period of accounting or interchange of accounts as to which any inquiry would be foreclosed upon the face of the proceedings.

Third—That in any event, whether such a plea were or were not sustained, then in the taking of evidence an appeal to the court should have been made to require a proper and strong showing of alleged fraud, etc., and a sufficient accounting for lack of earlier complaints or attack, before the court would inquire into the old and completed transactions and accounts regularly closed between the parties. In other words, before going into the accounting, there should have been an interlocutory decree finding that such accounting was proper and necessary, and fixing the basis upon
661 which it should be taken.

It is strange upon what a slender basis of fact a general yet grave charge of fraud will sometimes be made. The absence of specific charges in these attacks upon the Guardian Trust Company would ordinarily condemn the general charge of unfair or fraudulent dealing upon its face.

The similarity or duplication in the majority of the directorate of the companies is put forth as a substitute for facts; and it seems quite evident that the remarkable latitude in pleadings and evidence is traceable to the idea (more or less prevalent with nearly everyone concerned with the case, as

well as with the court possibly) that there is something not only essentially suspicious but definitely wrong in such a relationship. This quite fooling notion must be exploded before much progress can be made in the case.

The attacking counsel evidently assume that this relationship being shown or admitted, the burden is cast upon the Guardian Trust Company to show every transaction between the companies to have been fair, and every commission reasonable, and every charge correct, as in case of a guardian proving his account against an infant ward.

It seems not to be recollected that the Belt Railroad was a corporation managed by adult persons, the same as the Guardian Trust; that there was no actual or legal infancy about it.

Why not suspect and charge that the Belt Company took advantage of this relationship to defraud and cheat the Guardian Trust? The fallacious, unjust and evil-bearing nature of the notion is self-evident.

How soon can the lawsuit be terminated? Sooner, much sooner, than either party probably imagines. It depends upon counsel, upon the master and upon the court.

But there is a plain and urgent duty upon every one
662 concerned to end this case and end it speedily. And it is not clear why this duty cannot be made clear to some and enforced as against others.

The case involves about $500,000. This represents the wages of hundreds of human toilers for years. Several thousand of stockholders in the Guardian Trust Company and the Southern Railroad are interested.

The time of the court and the master, which the case has consumed is already great. The expense of stenographers and counsel, the time of witnesses, the correspondence, the time of all persons directly and indirectly concerned, the plans more or less thwarted or deferred by the waiting for the end, etc., all reveal a leviathan of waste which must be vigorously attacked, and speedily dispatched, or court practice must be confessed to be essentially a failure.

It matters not that the proceedings in course of law are frequently slow and sometimes seemingly interminable. Courts are constantly making radical changes in decisions on matters of law, or changes that seem radical, and the application of old law to new conditions occasionally startles us and shakes our preconceived notions.

So the courts are occasionally announcing new rules and decisions of practice, made necessary by changing conditions; and wherever such rulings can be made to conduce to the attainment of justice, the court has—must have—inherent power to so conduct its inquiries as to bring about an economical and speedy decree. Deliberate their investigations should be; but not necessarily tedious and absorbing all or a huge portion of the substance of the subject-matter in dispute.

Courts can learn and change and progress. If we have learned anything from Jarndyce vs. Jarndyce, such a case could not be ground through today at the same old pace, without the court and counsel involved becoming as notorious as the case itself.

In the present case, when its apparent magnitude and complexity were first apparent, the court upon the application of either counsel, should have appointed a special master,
663 who would agree to give his entire business hours to the hearings; the court or master should have given full notice that it would require the hearings to proceed regularly without intermissions except for extraordinary or emergency reasons; each side should have more than one counsel, each of whom would be competent to proceed in the absence of the other.

With the counsel working to end the case speedily and the court and master vigorously enforcing the duty, this case, if the inquiry as to old settled accounts had been shut off, as we think it ought to have been, should have been disposed of in a number of months; and by the use of schedules and condensed testimony applicable to accounts, a year should have sufficed in any event.

The two years' delay of Judge Black was sheer and unpardonable waste.

The allowance of two years for one side to take only a part of their testimony is not attributable to any procrastination or lack of industry on the part of Judge Trimble, counsel for the Guardian Trust (lately resigned), a practitioner of recognized ability. He apparently has been dragging the opposition along from week to week with persistence; and, considering his other engagements, his attention to the case has been assiduous. It is due rather to deep-seated habits of the courts and counsel, to the ruts into which court practice has settled, and a failure to recognize the just demands that such a prodigious lawsuit (involving in fact many lawsuits, or

amounting to as much) has upon the time of the court and counsel, and to strenuous though deliberate methods in its conduct.

No matter what custom and habit has been upon the part of all of us engaged in court practice, no matter what changes in practice would be involved by meeting such demands, they are just, and the case and its suitors are entitled to have them granted.

And this case of signal dimensions is as good as any other with which to make a turning point, upon which to base
664 an earnest appeal for the court to bend its practice to meet such just and economical demands. This may be necessary in such case to save the court from becoming a very juggernaut riding over justice by the usual delays.

There is here, it is hoped, no disposition to be critical upon counsel heretofore, handling the case for the Trust Company. It is easy to criticise, especially in the light of the past and by one not held to accountability.

On the other hand, we can always serve each other best by being thoroughly candid; and a thorough report upon the history and merit of the case necessarily involves some accounting for the delay in bringing it to a conclusion and for the apparent confidence of the opposition of their ability to prolong its pendency and to continue a huge portion of its substance before a final decree is entered.

In the first place such a case should never be given out to or accepted by counsel upon a salary. It should be given to one in position to devote his whole time to it; or (as this might be difficult to arrange for), to one who would take responsibility for its steady and unremitted attention, put the 'hooks' of energy, determination and a settled policy into the case, keep himself ready to counsel and respond to all important moves in the case, and who would assign a competent associate or assistant exclusively to taking the evidence and dragging the matter along with all due speed and persistency; who would anticipate future work by preparing in advance such tables, data and rough framework, the use of which it would be possible to anticipate, and to the extent feasible; who would be willing and anxious to fight any and all methods or moves tending toward undue delay, and not temporize with imagined prejudice or fear to risk reasonably severe methods in doing his part in the legal surgery which the complex case demands. A case in which such a large share of the indus-

trial life of a large community is sought to be hacked over in wearisome detail at the mere behest of one making a merely general charge, or uttering a mere cry of fraud, is en-
665 titled to precedence upon the part of the court, master and all counsel involved in the case.

And if it should be allowed to thrive for years feeding its own substance and leaving its awful trail of waste behind it, there must be some way of placing responsibility upon those having charge of it or upon the courts which permit it, or upon the community where it occurs.

The suggestions here made as to the appropriate practice in such a case as this are not mere accidental or academic pleas, or strained methods thought up as a bolster to hope for the speedy ending of the case.

The writer has 'lived' with them for some years.

The reflecting and progressive element of our communities is getting ready to demand, and to enforce the demand, for radical changes in court practice. Probably first among the reforms demanded, in addition to appropriate bills of cost, enforcing penalties for trivial delays in prosecuting unfounded claims or defenses, is a radical change in the ethics of the profession.

Several years ago the writer dwelt at length upon this subject in a formal communication to the Chicago Bar Association, and concluded that there was nothing in the way of the profession and the community holding both counsel in a case to account for delays in lawsuits, or a miscarriage of justice, and condemning a fight upon practice lines solely, the exercise of trick, skill, etc., etc.

The duty of the counsel as an officer of the court is usually forgotten in such cases.

What definite Advantage Can Accrue to the Opposition by Delaying the Case?

The prevalent idea probably is that as the Guardian Company has to recover its claim, has to 'chase' for its money, therefore, the Belt Company can well afford to defend against the claims, even though they ultimately be found to be just; and that the cost of counsel fees 'stringing out' the case is a small offset to the damage thereby done its opponent, the Trust Company, and to the advantage of the Belt Com-
666 pany, has by using the funds ultimately required to pay its debt, for investments in the meantime and as it chooses.

As a matter of fact, the advantage which ordinarily occurs from 'fighting off' a just claim by the use of the 'law's delays', is usually largely exaggerated. Any wise and progressive business man knows, and experience teaches, that this is very poor business.

Where merits are in doubt, fair compromise or speedy arbitration should be the rule. If delay is deliberate, it is the privilege of the moving counsel to push the case with vigor; and usually it can be pushed almost or quite as cheaply as it can be defended, and the debtor if solvent, usually pays his share of the cost of delay. Some opprobium (heretofore not half enough) attached to all methods of delay. Altogether they are very 'poor business'.

On the other hand, a party who has faith in his claim and has resources to prosecute it, has the privilege and it is his duty, after having made liberal offers of compromise or arbitration, to push the case vigorously to the end.

He will thus have placed the other side in default, and it will either result in his obtaining substantial justice, or if not, someone will be put upon record, and responsibility can be placed, which always costs somebody something and which ordinarily will be avoided if a determination to place it is made plain in advance by the conduct of the case.

What commercial advantage attends a merely dogged defense, or which averages up from such defenses, arises largely from the fact that a large number of suitors do not have the resources or the 'back'bone' to push their cases to the end.

And it is also true that the bills of costs usually awarded in many states are shamelessly inadequate to compensate even substantially the successful party for his his law fees and expenses, or to affix even a substantial penalty on him in the wrong.

667 But even as it is, the court's power in the premises, and especially the power of a court of chancery, and more especially in exceptional cases, is not appreciated. Courts of equity have power not only to do equity, but also to protect themselves from abuse in practice and needless and ruthless annoyances to suitors. This power is inherent in the court as a court.

There are, too, special cases which are and must be treated as exceptions to the ordinary rules as to the fixing of costs.

For instance, a trustee, who has faithfully discharged his trust, and rendered true and just accounts, who has been use-

lessly and wantonly attacked by his cestui que trust and harassed by expensive litigation, has been allowed reasonable counsel fees incurred in his defense, and to retain the amount from the balance of the trust funds in his hands.

If the Guardian Trust Company were a trustee for these other companies, it is clear that the court has power to and ought to allow it some compensation for being put to this terribly long record and inordinate delay and expense, provided its accounts be found to be subsequently accurate and just.

The theory of the opposition is that the Trust Company is a species of active trustee, liable to account to the Belt Company in all the transactions between the company during the whole of their mutual existence. The attacking party by the attack itself assumes to place the Guardian Company in this trust relationship, and has harassed the Trust Company to the same extent that it could have done had such relationship actually existed. Is there any sound reason why it should not stand at least a portion of the expenses thus ruthlessly thrown upon the Trust Company, in the same manner as if the relation, which it alleges to have existed, had in fact existed? It has hacked over and toyed with every item of the accounts for years. It has used the courts as whimsically, it has annoyed the Trust Company as much in this case, as it
668 possibly could in the other.

We, therefore, make bold to assert that in case the opposition prolong this inquiry further and further load down the record with much more of this repetitious and tedious testimony, and oppose the prompt disposition of the case, they will stand a splendid chance of paying a substantial sum outside of the claims of the Guardian Trust and interest thereon and the usual court costs.

We are now brought to another feature of the case and the practice logically applicable to it, which may be likewise thought novel or out of place by the ordinary practitioner or suitor.

The idea has found definite lodgment in American communities that arbitration is the way to settle industrial and wage disputes. The loss and damage and waste to the community at large, the third party, from continued locking of horns by the interested parties, is the basis for this idea. The party refusing to arbitrate is usually placed in default.

Now, why should not such a duty primarily rest upon parties having other disputes, especially where the questions

are matters of account, the value of services, the 'wages' of commissions, the prices of market commodities, etc.? Why should not the reckless use of the overcrowded courts consuming months of their time and attention to matters of mere book accounts between business men be also decried? Why is there not a duty upon both parties to such a controversy to have their differences arbitrated?

It is expected that the suggestion of a positive duty upon business disputants to arbitrate their differences will be thought by many to be novel or naive. But persistent thinking will reveal it to be well based. And it is not novel; for the courts and statutes have encouraged it from time immemorial. It is a duty to the community. Lawsuits are a species of enforced arbitration. There is ordinarily a reflection upon somebody when the courts must be used to compel arbitration. In fact, such a practice of voluntary
669 arbitration and an earnest public sentiment enforcing it would do more to relieve the present over-crowded court dockets throughout the land than any other thing; and it is a matter of grave doubt whether we will not be forced to adopt such a practice. It is probably the 'ripest' subject for the American Bar Association at the present time.

And if it be a positive duty on both sides to a dispute to arbitrate it, neither party can place the other in moral default until he has made his offer.

In this case, I am aware of no offer having been made by either side to arbitrate the matter of these claims; although if there ever was a case peculiarly fit for arbitration, this would seem to be that case.

It is not sufficient for one side to excuse the want of an offer to arbitrate by saying the other side 'would not have accepted it anyhow'. No matter how probable the truth of such alleged fact be, such a course does not perform a duty, accept a privilege or put anyone in default.

I, therefore, suggest that the offer be now made upon the part of the Guardian Trust Company to arbitrate this whole dispute. As there has been but a portion only of the voluminous testimony taken in the presence of the master and certainly not yet considered by him for the making of a finding, there would be but little duplication of expense and little lost but time in case the offer is accepted.

An offer of this kind, fair-minded men, treasuring the good opinion of the community, should certainly hesitate to de-

cline—such a declination would definitely place the responsibility for the further troubling of the courts.

This offer should be made to the opposition direct and also placed of record before the court or master before proceeding further in the case. It would also, it is thought, have a bearing upon the subject of costs and allowance of
670 counsel fees, as costs in equity lie in the discretion of the court; and such offer certainly would weigh in the exercise of such discretion.

We are informed that the Kansas City Southern is now controlled and 'voted' by Mr. Harriman and his associates. Mr. Harriman has the reputation of being liberal-minded and progressive. It is not believed that he would be apt to decline an offer of the kind outlined; and he is, we believe, decidedly above any disposition to use courts to delay the collection of a just claim. And as the method of arbitration is both economical and speedy, the chances are not small that he would accept it.

The hope of ultimately realizing upon the Guardian Trust Company claims above the collateral which it holds, is in fastening a liability upon the Kansas City Southern. It seems clear, therefore, that the Southern Company should have been made party to the case. This should be done now. Equity will enlarge the scope of a case and take in parties to save a multiplication of lawsuits and circuity of action. This course, however, would not let it open to the Southern Company to go over all the ground heretofore covered by the testimony. The Belt Company is primarily liable and the accounting is primarily with it, and no loss or embarrassment in the conduct of the case would be occasioned by making the Southern a party now.

Or suit could be brought on the law side of the court against the Southern upon the notes and the account; and the moment that the accounting with the Belt became final in the pending case, the question of liability of the Southern could be immediately tried and judgment upon the award be entered forthwith in case it were held liable.

So far the Southern Road has been absolved from open or public connection with the dispute with which it is legitimately concerned, and it thus has a direct inducement to use the defunct Belt as a means of dragging out the origin-
671 al case, or at least not to speed its progress. This is not right.

I am informed that an effort was made at Beaumont, Texas, to make the Southern a party to the suit against the Port Arthur Channel & Dock Company. The court refused the application. This would seem clearly to have been error.

The court at Kansas City, however, may not have thus erred and the effort to make the Southern a party there should have been made in any event.

The refusal of such an application would not bar a common law action of the kind mentioned above against the Southern direct, and this would substantially answer the demands of the situation.

The Merits of the Company's Claims.

The Guardian Trust Company's notes against the Belt Road (face) aggregate $337,762.23. The earliest of these notes were given in March, 1899, and the remainder during the next year and a half. These notes were given in renewal of other notes, the latter being given for advances and balances due on account as shown by the books. There is no dispute about the fact that the amount of the notes is correct as based upon or compared with the books showing. The open account of the Trust Company against the Belt is $31,809.49. Total claim, $369,571.72.

The basis of the attempt to escape a recovery on the notes is chiefly or entirely by way of counter-claims.

The Trust Company sometimes sold bonds and securities for the Belt Company; sometimes it guaranteed its paper; sometimes it acted as agent in various capacities; and sometimes it purchased the securities upon its own account and afterwards sold them.

In no instance that I have been able to discover was the relation in which the Trust Company acted, whether as purchaser, agent, etc., concealed from the Belt Companies, and there is no claim that it was. The books of each company reflected accurately the transaction, the prices paid or obtained, etc.

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Here, again, we pause to observe that it is simply impossible to conceive why the companies should not be bound by these completed transactions. They were owned by adult stockholders and managed by adult directors. If the majority acted badly or unwisely, it was incumbent upon the minority of directors, knowing or having reason to know of the transactions, or of the stockholders who had access to

the books, to call upon the courts for redress, if any redress was to be had. They could not lie by, take advantage of the deals if they turned out profitably and complain if they resulted in loss.

For business men who are concedely 'free agents' to establish a mutuality-of-directors relationship, or to submit to it for years, and then be permitted by the courts to attack all the business deals transacted between the corporate bodies, and require an entire accounting and involve the taking of seemingly endless testimony, and consume in loss of time a large [proposition] of the money value of each transaction—a thing which under other circumstances would never be thought of—is by every principle of common fairness and abuse of the use of the courts, is nauseating to all sense of economy, and galling to everyone with any substantive justice in his heart.

And in any event, it is the duly of the master and counsel to 'chop off' this [injury] at the point where accounts had been rendered between the parties and accepted, or where a reasonable time had elapsed without complaints made as to their accuracy.

But now as to the offsets claimed there are three items of offset or counter-claim against us, two of which must be allowed and the third of which is doubtful, viz:

1. An item of $89,333.33 with which in 1899 the Belt Company credited the Trust Company at the time a special credit was allowed the Belt by Mr. DeGoijen to better the book showing as to its financial condition. The Guardian Trust Company had guaranteed certain purchase money
673 paper put out by the Belt to the amount of the above sum. Degoijen put his personal guaranty behind the paper and the charge against him should have been by the Trust Company. It was, however, made by the Belt Company ultimately and the amount credited to the Guardian. As the Belt Company ultimately paid the notes and released DeGoijen from liability, the Belt Company should be re-credited with this amount. It is said upon the part of the Trust Company that the amount was really intended to be credited to the Trust Company on account of certain second mortgage Northern Connecting bonds which Degoijen persuaded the Trust Company to buy of the Belt, he agreeing to repurchase them of the Trust Company; yet the Trust Company's books show the item to relate to the purchase money notes. The error occurred from roundabout and erroneous bookeeping, and is

not attributable to the Trust Company, but to the Belt Company itself. The item must be allowed.

2. The Perkins bonds item: On April 28, 1892, the Trust Company sold to Caroline A. Perkins three Consolidated Terminal bonds for $2,550. By some error in entering the sale, the item was lost and the proceeds never accounted for. We should allow this item, with interest from the date of sale.

3. As to the third item, which may be called the 'stock profit' time: The Guardian Trust Company bought certain stock of the Belt Company at $35.00 and sold it in the East a day of two later to some Holland capitalist at $55.00. It thereby realized an almost immediate profit of $23,000. This does not look well upon the face of it.

It is, however, true that the local market had been a drag for months at $35.00. It is also true that $55.00 was an inordinately high market price. It might, therefore, be more logical for the purchasers to complain of the transaction than for the Belt Company to do so. Besides, while the Trust Company made a big profit upon this deal, there were many other such deals in which it lost much, which would make no more than a fair offset.

674 The fact is, however, that shortly before the purchase of the stock in question, the Trust Company had been agent for the sale of the stock; and this is a strong factor in testing this item. Still, the company bought stock as well as sold it on commission, and was a regular dealer in such stock. I am satisfied that some, and maybe all, or nearly all, of the directors of the Belt Company knew of the transaction from the first; and said company may now be estopped to question it. As [to] the extent of this knowledge cannot be told now, I must simply put this down as a doubtful item.

By promptly allowing the above first two items the account of the Trust Company will be pruned of all known doubtful items, and its attitude as a genuine seeker for justice will be most strengthened.

4. The 'Northern Connecting R. R. Co.' transaction.

It seems that the Suburban Belt Company, having a direct inducement therefor, by a prospective increased use of its terminals, contracted with the Northern Connecting Company to build the road of the latter for its bonds and stock.

To furnish the Belt Company money for the fulfillment of it contract, the Trust Company sold its Northern Connecting

Company bonds. The price obtained was $75. and with each bond went $350. of second mortgage bonds and five shares of stock. It was a fair price (sale made in exceptionally hard times), and the commission realized by the Trust Company was $70,000—less than 3 per cent of the par value of the bonds sold. (The Trust Company also, in 1897, sold and purchased some of the second mortgage bonds and accounted for the proceeds to the Belt Company). This part of the deal is not seriously questioned. But it is claimed that the contract of the Belt for building the road was oppressive and resulted in loss; and responsibility for its entering into the contract is placed upon the Guardian Trust, who, it is stated, 'dominated' or induced the Belt Road to do the unwise thing which on the face of it concerned the Belt Company
675 and the Connecting Company alone.

Here, again, the adult-and-infant, father-and-child, mother-and-baby idea intrudes itself. It is the chief bugaboo, the cardinal mischief, the lodestone of error which has so far dominated this case.

As a matter of fact, such a contract in terms, as is well known, was one that is frequently made between railroad companies and contruction companies; (2) that the Belt did not realize directly as much as was expected from the construction contract, was due solely to bond market conditions, which in 1896 and 1897 were not thriving; (3) it resulted in a decided profit to the Belt Company, for the rental paid by the Connecting Company for the use of the terminal facilities of the Belt was a good one—so good that later the Connecting Company later sued to be released from it, but failed to break it contract; (4) the Belt Company was 'of age'; it could deal for, as well as 'speak for', itself.

The other chief transactions, which have been inquired into by the receivers of the Belt Companies, relate to the purchase and sale of stocks and bonds during the progress of road building. The most important of these were:

5. The sale of $54,000.00 of bonds, taking with it some stock of the original Suburban Belt Railroad, for the construction of the first 4-½ miles from Second and Broadway to Cecil Station.

Mr. Stilwell made a contract with the Belt Road to organize a Construction Company and have it take $450,000 of the $500,000.00, the total bond issue of the Suburban Belt, and build the said 4-½ miles, or the first section of said road.

The Kansas City Terminal Construction Company was organized, and the Guardian Trust Company gave its services in procuring the subscriptions to the stock of said Construction Company. It was all subscribed for at par and paid in, the road was built and $400,000.00 instead of $450,000.00 was distributed among the stockholders of the Construc-
676 tion Company in accordance with the contract. The Guardian Trust Company received nothing for its services in this matter.

Furthermore, the six-mile extension to Brush Creek had been determined upon before the completion of said contract, and the Terminal Company agreed to allow the increase of bonded indebtedness to $1,000,000.00 and accept $400,000.00 out of the $1,000,000.00 issue; whereas it was entitled, or said Stilwell under his original contract was entitled, to $450,000.00 of a $500,000.00 issue only. At this time there was only one director in the Guardian Trust who was director in the Suburban Belt.

6. The purchase about August 1, 1890, by the Guardian Trust Company of $500,000.00 of the increased issue of the Suburban Belt. The bonds were purchased by the Trust Company at 92 net, were carried along for two years, and then sold for the same amount. The road was in its initial stage, and any one with railroad or bond experience would concede that this was a fair price.

7. The Trust Company, at four different times, commencing in August, 1894, and ending about April, 1895, purchased stock of the Belt Company, aggregating 2,750 shares. The prices paid were from $18.00 to $32.00 per share. The amount of these sales was paid to the Belt Company and duly accounted for. At the same time and partly during the same period the Trust Company sold 4,500 shares on commission for the Belt Company, aggregating $19.00 and $20.00 per share. It received $1.00 per share commission for the sale of 400 of these shares, and for the other 500 nothing.

8. Various sales from August to December, 1891, of 667 bonds of the Consolidated Terminal with 80 per cent stock bonus. Of these the Guardian Trust itself took 213 at the same price at which the others were sold in the market, with the exception that the Guardian Trust Company got only 20 per cent stock bonus instead of 80 per cent, which was given to other purchasers.

On October 27, under special resolution of the Con-
677 solidated Terminal Company, the Trust Company was to be paid 12 per cent net on all of the first issue of said Company's bonds, which were sold or disposed of to others—this to be also in consideration of services rendered by the Trust Company in its promotion. This would amount to $90,000.00. As a matter of fact, the Trust Company got $49,000, partly in bonds, and taking them at their market value, its compensation netted only about $43,000, or less than 6 per cent.

9. The Air Line Railroad transaction: It was determined to extend the Belt Road from a point near Blue River to Independence—about six miles. The Kansas City & Independence Air Line Company was incorporated January 23, 1891. It issued $300,000.00 of bonds, and then made a contract with the Kansas City Terminal Construction Company to build the road.

The Trust Company raised the funds for the Terminal Company by selling its stock—nearly $200,000.00 worth—and had a contract in writing to receive therefor a commission of $20,000.00 in full paid capital stock of the Construction Company and $5,000.00 in cash.

The Kansas City & Independence Air Line Co. met with difficulty in getting its railroad crossing and street crossing franchises, the money market was tight, and the Terminal Construction subscriptions were not all paid in, but the Construction Company almost completed its contract, and by special resolutions on the part of the Air Line Company and said Construction Company, the road was turned back to the railroad company in its then condition.

What the Trust Company actually got for its services in handling this matter was thirteen bonds and some worthless stock, the whole equivalent to $10,400.00 in cash.

10. The Union Terminal Railway bond transaction: This company was organized in Kansas for the building of the Kansas portion of the Belt Road. The Trust Company sold 444 bonds of its $2,000,000 bond issue at 87.64, and bought 1,496 of said bonds, for which it paid 86.1/3. The proceeds of sale and of said purchase were strictly accounted
678 for by the Trust Company.

Almost any one familiar with the bond sales of prospective railroads would say at once that there was nothing unfair upon the face of these scheduled transactions, and cer-

tainly that they could not be considered decidedly or grossly unfair. Especially is this clear when it is considered that the Belt Road had no backing to its bonds or papers (except an occasional guaranty by the Guardian Trust in which case the latter earned an extra stipend), and had to struggle along to build itself piece by piece, link by link.

Notwithstanding that the whole matter of the account and dealings between these companies, as has been several times said herein, is absolutely foreclosed from legitimate inquiry, yet the testimony of Mr. Willey, who was called by the opposition, is full and exhaustive as to all the transactions, and each of the hundreds—yes, thousands of items—upon the books is fully accounted for and explained. The proceeds of all bond sales, the disposition of the various bonds, the course of dealing, and every transaction, etc., etc., are fully outlined and reoutlined, etc.; and it would seem that a complete history of everything connected with or relating to these companies, directly or indirectly, has been made, with nothing missing unless it be the private life of the various persons who figured in these enterprises.

Mr. Johnson, auditor of the Kansas City Southern, was called by the opposition, and has likewise given exhaustive testimony. The attempt has been made, through Mr. Johnson, to have the accounts show differently from the results arrived at by Mr. Willey; but this is chiefly done by assuming that the companies were not competent to contract between themselves or modify their contacts, and by seeking to reestablish an account between them upon what the attacking party might be pleased to call an 'equitable' basis—especially in view of subsequent events which could not be foretold at the time. A thorough analysis of the testimony of each
679 of these two expert witnesses does not reveal serious or ominous dicrepancies between them as to the book showing, and this must control.

It is worthy of note that accounts were exchanged regularly between these companies from the beginning; that the auditor of each company checked up his account with the account of the other company at the end of each month, rectifying any errors that might have temporarily intervened; that from time to time notes were given to settle monthly balances and interest allowed upon monthly balances, and that yearly the books of the companies were examined by experts at the request of a large number of the stockholders.

Yet, notwithstanding these facts and this course of dealing, and that the parties had legal power to contract between

themselves, the case has been loaded down with such a mass of vouchers, accounts, data and testimony as would utterly bewilder an Alaskan boundary or Behring Sea arbitration tribunal, or any other tribunal called to pass upon national issues or even to decide the fate of nations.

There is one duty which this company owed the case, which, it is believed, it has thoroughly performed. A case of this kind should be the subject of compromise between fair minded business men, and efforts should be made to compromise it before even courts or arbitrators are [trouble] with it. The company has made three or four definite and clear offers of compromise to its opposition. The last one was a very specific and definitely outlined offer made in writing a year and a half ago by Judge Trimble. It was an offer to accept $275,000 and cancel and release all the Trust Company's claims involved therein, and in addition thereto a number of outside claims, to which there was no sort of defense and which aggregated over $50,000, besides several large contingent claims on which recovery was doubtful.

The offer was not only fair, but more than fair, and it is thought that it was not wisely rejected—,or, rather, not wisely ignored.

680 On the other hand, the opposition does not seem to have been so anxious to end the case and lift the burden of it from the courts, as to have ever made any definite offer or counter-offer, or even to have made any definite reply to the offers made to them, except, as I am informed, to lately give out some tentative suggestion to pay a mere fraction of the company's claims. The Trust Company has, therefore, exhausted its efforts at compromise and performed its duty, as it is believed, in this respect.

The Channel & Dock Co. Suit.

(Pending in United States Court, Beaumont, Texas.)

As to the claim for advances to the Channel Company by the Trust Company amounting to $21,916.44, its merits cannot be seriously questioned. The Trust Company claims that the Kansas City Southern is liable for this claim in the same manner as it is liable for the Belt Company's debts; for the Channel Company stock and assets were involved in the reorganization scheme of the Southern Company in the same manner as were those of the Belt Company. I am firmly of opinion that the Southern is so liable.

The said claim of the Guardian Trust Company is sought to be defeated by way of counter-claims. These latter are:

1. A claim on the part of the Channel Company that the Trust Company officers misused it in the same manner as it was alleged to have misused the Belt Company; and a claim to an accounting between the companies and a decree for 'large sums' due the Channel Company. 2. The claim of the Provident Life and Trust Company against the Guardian Trust Company upon an alleged stock liability of the latter to the Channel Company. The Provident Life, as trustee for the bondholders of the Channel Company amounting to the tidy sum of $1,360,318.08. The decree was for a deficiency remaining after the foreclosure of the Channel Company property covered by the mortgage given to secure the bond issue.

There was some land of the Port Arthur Town Site Company also included in the mortgage which has not yet
681 been foreclosed, and when it shall be the said decree will have to be credited with what will be realized on it. It is conjectural what such land is apt to bring, but it has been estimated to be now worth several hundred thousand dollars.

The net liability sought to be fastened upon the Trust Company is, therefore, upwards of a million dollars ($1,000,000.00).

It is not claimed that the Trust Company originally subscribed for the stock in question; but a roundabout theory of liability is evolved from a series of stated transactions, care being taken to omit dates and other essentials and to ignore legal and business relationships and the natural processes of cause and effect.

Transactions are complained of (dates being omitted) that were in fact old and which were formally completed and the accounts therefor squared between the companies before the credit arising from placing the bonds was given to the Channel Company.

The Trust Company acted as agent for the Channel Company in placing the bonds as in the case of the Suburban Belt bonds.

It took the stock certificates, as agent for the Channel Company, and transferred them to the purchasers of the bonds, they being entitled to the stock as a bonus.

There was an express provision in the bonds to the effect that the Trust Company should not be liable on the said stock.

This would seem to be controlling to the ordinary mind.

To get around its effect, the Provident Life made sundry charges of mismanagement of the Channel Company's affairs by the Trust Company, of undue 'Domination' by the latter, of getting undue advantage in the way of profits from its dealings with the former, etc., the charges being similar to those made in the Kansas City case.

It is also said that the payments made in lands and other property for Channel stock subscriptions were grossly inadequate, and that hence the stock was not fully paid, and that therefore, the Trust Company and all concerned with its management of Channel and Dock affairs are liable
682 for this managerial malfeasance. (These complaints are repeated by the Channel & Dock Company in its answer to the intervening petition of the Trust Company).

In investigating the merits of this claim, I have not had the advantage of evidence as in the case of the Kansas City suit, and, therefore, cannot speak so positively as to the facts. Yet the whole theory of the complaint, in general, goes upon the same old theory of 'domination' on the part of the Guardian Trust and infantile helplessness and contractual imbecility on the part of the Channel Company.

They are charged also several acts of grave irregularity on the part of Mr. Stilwell, which I can tell nothing about, but I cannot see that the parties complaining were legally affected by them.

From the admitted course of dealing, and certain undisputed and controlling facts, I can see nothing appreciably ominous in these claims of the Provident Life and the Channel Company, independently of certain legal propositions that bar recovery upon them.

As to the alleged stock liability, and the claim in effect that the Trust Company notwithstanding the specific provisions for non-liability upon the stock, is liable on the stock, it is difficult to conceive of a theory upon which such claim with color of right, can be made by the Provident Life. If the stock had been full paid, nobody was liable upon it. The only purpose of the provision in favor of the Guardian Trust Company was to exempt it from liability if the question as to its being fully paid should arise. The question now arises; and the clause must now fulfil its purpose, and as a matter of course, the exemption must inevitably attach.

There are several other reasons, each of which, in my judgment, is sufficient to bar a recovery on this alleged stock

liability, which I will not lengthen this report in detail and explain.

This is a large, very large claim. But figures themselves
683 are not ominous. A claim of ever so many figures that runs counter to the law of gravitation or mathematical processes or well known and simple rules of contract, is not ominous. When circumstances are many and complexity exists, theories are sometimes spun which may confuse and mystify and occasionally swing the courts into error. But several common contractural principles that govern this Channel Company case are so clear and so easily understood that the complex theories woven in the pleadings can but poorly hide them.

I am firmly of the conviction that this case against the Trust Company must fail, and that the chances of the court ultimately holding it liable are exceedingly slight.

Conclusion.

After a study of the case, thought to be thorough enough for the purpose, I conclude:

That after allowing the above first two items of counter-claim of $89,333.33 and $2,550, the Guardian Trust Company has a net valid claim against the Belt Company of $277,688.39. Upon which interest to date amounts to about $92,400.00. Making a total due at this date of substantially $370,088.39; and of which about $34,500 (being $23,000 and interest thereon since April, 1896) only is at all doubtful.

To the above must be added the claim against the Port Arthur Channel & Dock Company of $21,916.44.

Upon which interest to date amounts to about $7,900—$29,816.44.

Making a grand total in the two cases of about $399,904.83. Or substantially $400,000. (Later, May 1, 1905).

The evidence adduced on the part of the Belt Company since this report was written reveals this Degoijen item of $89,333.33 to have been connected with other transactions and to work out in favor of the Trust Company; it is the writer's belief that the item must legally and equitably be allowed in its favor.

It appears, too, and this from the testimony of the op-
684 position that as to the 'stock profit' items put down in the report as doubtful, the purchase of the stock

from the Belt by the Trust Company was made long before the resale by the latter, although the transfer was made shortly before; and it is believed that these items are, therefore, not doubtful upon their merits.

The net showing, therefore, allowing liberally against the Trust Company, as to a few new items of lesser importance, is to increase the estimate in the report to the extent of $100,000 or more and to make a grand total of about $500,000.

As to the Texas case—the Channel & Dock suit—has been settled. $30,000 of the Trust Company's claims must now be deducted from this total estimate.

There is a feature of this case that must not be ignored in making a full report of its status and its history. There is, somehow, a feeling, shared, at least, by some interested in the company, and hence in the case, that the company has been more or less handicapped from the beginning of this case on account of a well-advertised public prejudice against Mr. Stilwell, who is ordinarily supposed to have been the dominating personal factor in the directory of the companies involved. This notion, as such notions usually are, is apt to be exaggerated. We do not doubt that, if such a prejudice existed in the community, it could be made in part a cloak for what would otherwise seem to be a wanton attack upon long existing business relations and a more or less impertinent attempt to inquire into matters of such age as would ordinarily preclude court inquiry. But it is simply inconceivable that present stockholders of the company could be prejudiced by any court or official who might have anything to do with the case, because of any prejudice against the person who sold them stock. Judges are apt occasionally to be impelled by their feelings toward certain parties to make wrong orders and to commit injustice; but in
685 nearly every instance this arises from an impulsive and earnest hatred of wrong itself, and not primarily of the person involved, and it is very rare that a judge, on being shown that he has judged persons incorrectly, is unwilling to reframe his judgment in accordance with facts shown him. This feeling, which is shared only by some, that the Guardian Trust Company has an uphill fight to get what it is clearly entitled to, should be banished forthwith.

It is also proper to state that the whole course of dealing between these companies does not reveal to an unprejudiced mind anything on which to single out Mr. Stilwell for severe condemnation. He was a promoter, and hence an optimist. The promoter has his place. He sees chances to make money,

which frequently others do not see. He initiates the development of properties and opportunities. He is entitled to fill his place and to be allowed his reasonable reward. It is not right, however, to allow the promoter, who may personally possess but a mere fraction of the means necessary to back the enterprise, and who ordinarily has not paid the penalties of heavy personal losses through financial errors, and who has not climbed up the 'stormy' side, to dominate the financial policy and affairs of the enterprise. The promoter is impatient for results; he takes 'short cuts'; he neglects essential formalities, which brings its share of ultimate financial discredit. A new industry, to be healthfully promoted—no matter what are its prospects of remunerative or 'fat' returns—should always be 'placed' within a conservative financial experience; and the principle sould ever and constantly be recognized that even 'the good things' must yield to sound financing methods. If, however, the promoter is allowed by others interested, and who are placed with him in the management, to constantly dominate the whole deal and the policy of the enterprise, and failure or reverses occur, the responsibility therefor should not be placed upon the one man, but upon all concerned.

686 There is a lesson to be learned, however, from the financial history of the Kansas City Belt Road.

The scheme was a logical one and the Belt Road a public industrial necessity. It is now paying well, and interested parties claim that it has always paid a fair interest upon the actual original cost. But it would seem to an outsider that even a logical and promising enterprise should await its development until it could enlist the support of people financially able to stay by it until it is thoroughly consummated, and who are also able and willing to keep it out of the courts, when the interest which it might pay was temporarily in times of depression or adversity reduced from, say, eight or ten per cent. to, say, three or four per cent.

As railroad enterprises are usually financed, the courts now interfere almost as a matter of course whenever the enterprise fails to pay the rate of interest which the promoters have calculated upon and arranged for by bond issue, etc. The total cost, directly and indirectly, to the enterprise, and to the stockholders of the usual court proceedings, receiver's expenses, reorganization committees, law fees, delays in contemplated improvements, with all their attendant damage, frequently amount to the money difference between the old and the reorganized basis.

Secondly. The use of construction companies and 'section' companies is, as it is plain to any outsider, a mere device to place financial backing to the enterprise upon the public—as some would say, to 'float' it. The use of these companies adds complexity to the whole deal, and complexity, as elsewhere said, means waste. Even the continued harmonious conduct of the various branches of the enterprises by the use of separate corporations always demands for itself and appropriates to itself its full share of cost or waste. And when the time of dispute and 'filing out' comes this cost is multiplied in extent. We do not say there is in no instance a logical place for the construction company or
687 for 'sectionizing' railroad companies when the ultimate objective enterprise is great in extent and covers a great deal of the country. There may logically be large sections of an interstate railway, each of which can be controlled and managed by a local company, and its bonds placed and its financiering done with special reference to it as a local railroad. We simply say that this method carried its cost. There are cases where the legitimate advantage may exceed that cost. It is, however, true that in a small local railroad the advantage of the sectionizing process is comparatively little and the cost comparatively great. It is confessedly true that the Consolidated Terminal and the Independence Air Line, whose roads were an essential portion of the contemplated Belt, were organized simply because of the fact that their construction bonds could be better placed upon the public by organizing a new and 'fresh' company. Yet, as we believe, it was an error.

This method was consented to by all parties concerned, and was in line with current financial railroad building methods. There is no special condemnation, therefore, that should be visited upon Mr. Stilwell or his co-directors for adopting these plans. Everybody knew of them and everybody interested consented to them. Such methods are not the wrong methods of these particular men; they are real financial habits, they are railroad habits, they are community habits which prevail throughout the whole country.

Every bit of useless complexity in such cases breeds its proportion of doubt and mystery in the mind of the distant stockholder, and helps to prompt attacks in court to cover the motive for it, and to swell the volume of evidence to reduce the mesh and to add to the 'mess'.

It is believed that there is an opportunity for some progressive railroad man to take the lead in simplifying the

methods of railroad construction and of placing the financial obligations therefor upon the public. It is far easier for the investing public to understand the status of one com-
688 pany with a construction department and various other departments than it is to understand the status of one general enterprise farmed out to different companies with largely differing stockholders and a varying directory and office force, etc., etc. And when the time of stress comes the very absence of varied subsidiary or 'section' companies gives a big economic advantage to re-organization plans; and economy is wealth.

In conclusion, I recommend:

1. That an offer of arbitration of the subject-matter in dispute be at once made to the Belt Company and the Kansas City Southern Company.

2. That without waiting for any reply to said offer, the case be placed promptly in the hands of counsel, who will

(a) Give it precedence in the matter of attention and hold himself ready to respond in court to all important moves in the case, and take the responsibility for an unremittent and agressive policy looking towards getting it concluded as early as possible.

(b) Assign an associate or assistant counsel exclusively to speeding up the case and closing the testimony, etc.

(c) Anticipate all work to be done and papers, etc., to be drawn by preparing in advance such drafts and data as can practically aid in the prompt disposition of the case.

In making suggestions above, as to the future conduct of this case, there has been no effort made to suggest abnormal methods or prophesy 'great things'. No particular genius, as it is thought, is required to put the case through in such manner as it deserves. If one with ordinary skill and economic sense simply recognizes what the continued taking of testimony in the good old way will entail, and what in-
justice it will result in, and outlines to the court and
689 master and opposing counsel a definite plan of promptly and economically getting at the merits of the case in all its phases, it seems to me that he will be able to place the responsibility of making far greater progress in the case upon the consciences of all the parties concerned, and to enlist court, master and counsel in systematic and earnest cooperation in relieving the court of this involved accounting

and account. If he should not succeed in this, he could, by making his earnest appeals at every step and in writing, where possible, succeeded in making the record and placing the responsibility, which, if the case is not soon ended, would be a grave responsibility upon some one. And ordinarily such responsibility, if seen in advance, by progressive officials and faithful lawyers, recognizing also a duty as citizens to the community, will be avoided.

If the matter be taken hold of vigorously, and the master and court can be enlisted in the effort to speed the cause in the way that fairness to the case demands, a final decree in the case should be reached in four or five months, and certainly within eight months at the outside. The opposition should be ruled to close their proofs within a very short time. The Trust Company could then agree to put in its proofs in a very short time. While the remaining testimony was being taken the salient points of the testimony already taken could be abstracted and scheduled up for the master's consideration. When the testimony shall have been closed, the case could be promptly argued and promptly decided. It is not to be expected that the master and court, as well as the counsel, will be reluctant to submit to any policy that will tend to speedily lift this burden from the courts and from the community, so that the small army of parties engaged and interested may devote their time and attention to the real work of life.

Respectfully submitted,

HARRY S. MECARTNEY,
145 LaSalle Street, Chicago."

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690 Mr. Rosenberger: As to item for $3500.00, number 441, paid to Wollman, Solomon & Cooper, I offer the sixth paragraph of Judge Thayer's order made in October, 1902, discharging Wash Adams as receiver of the Guardian Trust Company.

Mr. Smith: Does that refer to the Wollman, Solomon & Cooper item?

Mr. Rosenberger: Yes.

Mr. Smith: I object to it for the reason the order does not show for what services the compensation was allowed or that

it had anything to do with the litigation under consideration in these proceedings.

Mr. Rosenberger: I expect to show that by further testimony.

The Master: With that announcement, that counsel expects to show that by further testimony, the objection is overruled.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Mr. Rosenberger: I read from that decretal order, which appears on pages 411 and following, Volume I of the record in the Shedd case, said paragraph 6 being on page 418 thereof:

"Sixth: That there is hereby allowed to the Receiver, Wash Adams, Esquire, in full compensation for his services and expenses as Receiver, the sum of Seven Thousand and Five Hundred (7500) Dollars and the further sum of Seven Thousand One Hundred and Twenty-five ($7125.00) Dollars to the firm of Trimble & Braley, and the further sum of htirty-five hundred ($3500) Dollars to the firm of Wollman, Solomon & Cooper, for their professional services as attorneys and expenses rendered and expended to and on account of the said Receiver, Wash Adams, and his predecessor in such receivership, Francis M. Black, which sums shall be paid by the Receiver out of the funds in his hands before turning the same over to the Guardian Trust Company as hereinbefore directed."

Mr. Rosenberger: Let the Master please refer to the original account, Item No. 127, as bearing upon the
691 amounts paid by the Guardian Trust Company to Trimble & Braley for services rendered to the Trust Company in the Cambria suit prior to the appointment of Judge Black as receiver and included in Item No. 127 of this account before the Master, I offer in evidence the answers filed by Trimble & Braley on behalf of the Guardian Trust Company in the four foreclosure suits filed by the Provident Life & Trust Company, September 6, 1900, against the Kansas City Suburban Belt Railroad Company, Kansas City & Independence Air Line and Consolidated Terminal Railway Company and the Union Terminal Railroad Company, said answers being filed on November 5, 1900, said answers in said suit of Provident Life & Trust Company vs. Kansas

City Suburban Belt Railroad Company being set forth on page 158 in the record on appeal, number 2329, in the United States Circuit Court of Appeals in the appeal entitled: "Guardian Trust Company, Appellant vs. Kansas City Southern Railway Company, being the first injunction appeal, and the tenor and contents of the other answers being shown by stipulations numbers 7 and 8, paragraphs 7 and 8, on pages 2 and 3 of said record:

Mr. Smith: I want to object, if the Master please, to the uncertain and conflicting offer of these answers that is made by counsel for the Trust Company. All four of these answers are offered in evidence and then after he gets through he says there is a stipulation. Now, I want to object, I don't know as I do want to object, but I want to find out before I make my objection whether counsel is taking the position that these answers are being offered in evidence for the purpose of showing the value of the services rendered by Trimble & Braley. If he is I think that is a very proper way to try this issue of Trimble & Braley's judgment and also because there isn't any other way for the Master to try it, except hear evidence of services rendered. If this is being done because the judgments are binding and can't go into the merits of those issues, then I can't see how you can receive these answers in evidence to show what character of service was that was
692 rendered. The Master either must take one position or the other. Now if the judgments are to be construed by the Master as binding on us, I object to the answers going in, because unduly encumbering the record, making a record extravagantly long without any need or occasion for it. I think counsel ought to be required by the Master to state his position and theory on this thing, so we may know what he is driving at, whether he wants all the exhibits copied in the record or whether he wants the Master to consider the exhibits as bearing on the value of services rendered by Trimble & Braley, or what is his theory.

The Master: For what purpose do you offer it, Mr. Rosenberger?

Mr. Rosenberger: For the purpose merely of identifying the answers which are referred to in the opinion of the Supreme Court of Missouri in the Trimble & Braley case, 244 Mo. at page 228. The judgment in that case on the face of the record includes items of fees which are not being sought to be recovered in this proceeding and for the purpose of identifying answers for the preparation of which Trimble & Bra-

ley were allowed fees in that case and their relation to the Cambria case solely I am making this offer.

The Master: Then it goes to that service?

Mr. Rosenberger: No; not offered for that purpose, merely for the purpose of showing—

The Master: What the service was?

Mr. Rosenberger: What the service was as shown by this opinion.

The Master: The objection will be overruled.

To which ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, duly excepted.

Mr. Smith: Is the Master going to have all four of these answers in here?

The Master: Are they all alike, Mr. Rosenberger?

Mr. Rosenberger: It is so stipulated in this record.

593 The Master: The Master will admit one of them with a paragraph in the stipulation that the other answers are like it.

One of the foregoing answers so admitted in evidence, and the stipulation referred to, are as follows:

"In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

The Provident Life and Trust Company of Philadelphia, Complainant,
No. 2464. vs. In Equity.
Kansas City Suburban Belt Railroad Company, Defendant.

Separate Answer of the Defendant, The Guardian Trust Company, to the Bill of Complaint in the Above Entitled Cause.

The Guardian Trust Company, having been made a defendant in the above entitled cause, and having been given leave, as such defendant by an order of this court, to plead, demur or answer to all or any part of the complainant's bill of complaint, now and at all times hereafter saving to itself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for an-

swer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to—answering says:

That this defendant admits that the complainant is a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, and is a citizen of said state; and admits that the defendant, the Kansas City Suburban Railway Company, is a corporation organized and existing under and by virtue of the laws of the State of Missouri, and a citizen of the said state; and a resident and inhabitant of the Western Division of the Western District thereof, with its principal office in Kansas City, Missouri.

This defendant further admits that the Consolidated Terminal Railway Company, a Missouri corporation, being thereunto duly authorized by its stockholders and board of
694 directors, did, on the first day of February, 1892, make and execute its certain series of seven hundred and fifty (750) bonds of the denomination of one thousand dollars ($1000) each, aggregating seven hundred and fifty thousand dollars ($750,000) payable on February 1st, 1922, at the agency of said company in Philadelphia, with interest thereon at five per cent (5%) per annum, payable semi-annually, on the first days of February and August in each year, at the same place upon the presentation and surrender of the coupons annexed to said bonds, as alleged in the bill of complaint, and as described in the copy of the mortgage filed with and made a part of the bill of complaint and marked "Exhibit A".

This defendant admits that on or about the first day of February, 1892, being thereunto duly authorized by its stockholders and directors, said Consolidated Terminal Railway Company executed and delivered to this defendant, under its then name of Missouri, Kansas & Texas Trust Company, and to the complainant, a certain deed of trust in the nature of a mortgage, whereby it conveyed unto this defendant and the complainant, as trustees, the property described in the bill of complaint and in the copy of the mortgage filed with the bill of complaint, marked "Exhibit A", in trust to secure the payment of the principal and interest of said bonds; and admits that this defendant and the complainant accepted the trust created and conferred upon them by said mortgage or deed of trust, and admits that all of the property described in and conveyed by said mortgage or deed of trust is situated in Jackson County, Missouri; and that said mortgage was duly

recorded in the office of the recorder of deeds of said county on May 11, 1892.

This defendant further admits that on or about the 25th day of July, 1892, the said Terminal Company entered into articles of consolidation—as authorized by and in accordance with the provisions of the statutes of the State of Missouri—with the Kansas City Suburban Belt Railroad Company, another Missouri corporation, thereby forming one continuous line of railroad, running in the same general direction; that said Articles of Consolidation were duly approved and
695 ratified by the stockholders of said company, and filed in the office of the Secretary of State; and that thereby there was formed and organized the defendant, the Kansas City Suburban Belt Railroad Company; and that by reason of such consolidation, the defendant became and is directly and primarily liable for the bonds and coupons of said Belt Line Company, hereinbefore referred to and for the obligations, covenants and liabilities of the said Belt Line Company, under the terms and provisions of the said mortgage or deed of trust, as alleged in the bill of complaint.

This defendant, further answering, states that it has no knowledge or information sufficient to enable it to form a belief as to whether or not the said Terminal Company and the defendant, the Kansas City Suburban Belt Railroad Company, or either of them have or has acquired other property which was intended or expressed to be included in and covered by the description of property in said mortgage or deed of trust, hence this defendant asks that complainant be required to make strict proof of its allegations as to that fact, if it be a fact.

This defendant admits that the payment of each and all of said bonds was duly guaranteed by the defendant, the Kansas City Suburban Belt Railroad Company, as alleged in the bill of complaint.

This defendant further answering admits that all of the bonds authorized as aforesaid to be issued under the terms of said mortgage or deed of trust, to-wit: the bonds aggregating in the principal sum the amount of seven hundred and fifty thousand dollars ($750,000) have been duly executed by the said Consolidated Terminal Railway Company and duly certified to by this defendant and the complainant, as trustees, as provided in the said mortgage; but this defendant denies that all of said bonds, or that any of them except sixteen

(16) or less of them, are outstanding in the hands of the holders thereof, for value, as alleged in the bill of complaint.

And this defendant states and shows that seven hun-
696 dred and thirty-four (734) or more of said seven hundred and fifty (750) bonds were, prior to February 1st, 1900, called in and taken up for and on behalf of The Kansas City Southern Railway Company, a Missouri corporation, who owns all or substantially all of the stock of the defendant, the Kansas City Suburban Belt Railroad Company, and of said Terminal Company; and were in March, 1900, duly pledged by said Kansas City Southern Railway Company as collateral security for bonds of its own issue; and that they ever since have been, and still are, held by the pledgee thereof as collateral security for the bonds of the said Kansas City Southern Railway Company, not to be enforced or collected, either as to the principal or interest thereon, except in case default be made in the payment of the principal or interest of the said bonds of The Kansas City Southern Railway Company; and that no such default has occurred or been made; and that said seven hundred and thirty-four (734) bonds are not outstanding so as to be enforceable or collectible, but lie dormant in the hands of the pledgee, awaiting the said contingency which would give the holders of the bonds of The Kansas City Southern Railway Company, or the said pledgee on their behalf, the right to enforce their collection, and to apply the proceeds to the payment of the bonds issued by The Kansas City Southern Railway Company. The facts connected with the taking up and pledging of the said bonds and the ownership of said stock of the defendant, the Kansas City Suburban Railroad Company, will be more fully hereinafter stated.

Further answering, this defendant admits that it was provided in and by said mortgage, that in case default was made in the payment of interest on any of the bonds, and that if such default should continue for three months, the trustees named in the mortgage should have the power to enter upon the premises and after such entry, or without it, to advertise and sell the mortgaged property as stated in the bill of com-
plaint; and it admits that it is provided by said mort-
697 gage that said rights of entry and sale should be cumulative remedies, additional to other remedies allowed by law, including the remedy of foreclosure by way of judicial proceedings. But this defendant states and shows that the true intent and meaning of the said mortgage is that the trustees therein can institute and maintain such foreclosure

proceedings, only after the holder or holders of some one or more of said coupons—who, by reason of being such holder, had the lawful right to collect the same—had duly presented such coupon or coupons at the place specified in said mortgage and duly demanded payment thereof without avail; and that after such presentation, demand and failure to receive payment, had requested the trustee to resort to foreclosure so as to enforce the right which such holder or holders had to the payment of such coupons; and this defendant further states and shows that no such presentation, demand, refusal or request, has at any time ever been made or had by any one having the right so to do, on any of the coupons attached to any of said bonds.

This defendant admits that on August 1st, 1899, an installment of interest on said bonds fell due, amounting in the aggregate to eighteen thousand, seven hundred and fifty dollars ($18,750), but defendant denies that there was any such default made in the payment of any part of said installment of interest as would entitle the trusees in the mortgage, by virtue of the terms thereof, to ask a foreclosure of the mortgage.

This defendant states and shows that all of the coupons representing said installments of interest which were presented for payment at the agency of the said Terminal Company in the City of Philadelphia, the place specified in the mortgage and the coupons for their presentation and payment, were paid. That coupons of said installment aggregating eighteen hundred and twenty-five dollars ($1825) were not presented for payment, but were and are held and owned by this defendant; and that all of the other coupons of said installment of interest have been paid and discharged when and as presented for payment; that the said eighteen
698 hundred and twenty-five dollars ($1825) of coupons so held by this defendant, have not been paid, but they have not been presented for payment and no foreclosure has been requested on account of the non-payment thereof.

This defendant denies that an installment of interest aggregating eighteen thousand seven hundred and fifty dollars ($18,750) fell due on February 1st, 1900, and denies that another and further installment of interest upon said bonds amounting to eighteen thousand seven hundred and fifty dollars ($18,750) fell due on the first day of August, 1900; and denies that a large part or any of the coupons representing either of said installments of interest were presented for payment and payment thereof demanded by the lawful holders thereof; and denies that payment thereof, or of any of

said coupons, was refused; and denies that any part of either of the said last named installments of interest maturing February 1st, 1900, and August 1st, 1900, remains due and unpaid.

This defendant states and shows that, by the terms of said bonds and coupons, such installments of interest would have matured on the first day of February, 1900, and the first day of August, 1900, if the said bonds had, at that time, been outstanding obligations in the hands of holders who had the right to demand the payment of such interest; but that only sixteen (16) or less of said bonds were, on February 1st, 1900, and August 1st, 1900, outstanding in the hands of persons who had any right to collect the interest thereon; and that if the payment of the interest on said sixteen (16) or less of said bonds, or any of them, was demanded, and payment thereof refused, on or after either of said interest-paying days, that such refusal was fraudulently made by the defendant, the Kansas City Suburban Belt Company, and the said Kansas City Southern Railway Company, for the purpose of creating a colorable default on which to predicate a foreclosure, in order to accomplish, by collusion with the complainant, the fradulent purpose of cutting out, and cheating the unsecured creditors of the said defendant, the
699 Kansas City Suburban Railroad Company, as will be hereinafter fully stated.

This defendant further answering, admits that the defendant, the Kansas City Suburban Belt Railroad Company, has a large floating indebtedness, the exact amount of which this defendant does not know, but it is informed and believes and avers the fact to be, that said indebtedness is nearer six hundred thousand dollars ($600,000) than four hundred and fifty thousand dollars ($450,000) as stated in the bill of complaint; and admits that amounts on account of wages, labor and current expenses incurred in the operation of its railroad, are, from time to time, becoming due; but denies that the said defendant, the Kansas City Suburban Belt Railroad Company, is insolvent, or unable to pay all or any of its said floating indebtedness, or all or any of the said amounts due or to become due on account of wages, labor or current expenses incurred in the operation of its railroad; but states and shows that, upon the contrary, the said defendant, the Kansas City Suburban Belt Railroad Company, is amply able to pay all of its floating indebtedness, and that its earnings and income are more than enough to pay all of its fixed charges, including the interest payable on its bonds, its oper-

ating expenses, and any and all amounts due or to become due its employes for wages or labor; and denies that the property and premises covered by the mortgage or deed of trust is an inadequate and insufficient security for the payment of the outstanding bonds and coupons secured by said instrument; but states and shows that, upon the contrary, the property conveyed by said mortgage is worth very much more than the total amount of all of said bonds and coupons described in and secured by the said mortgage, together with all of its floating indebtedness and other liabilities; and denies that there is danger that any judgment may be recovered against said defendant, the Kansas City Suburban Belt Railroad Company, on any of its liabilities of whatever nature, which it could not promptly pay, if those
700 persons who hold its purse and dominate and control its actions as hereinafter stated, wanted to pay them.

This defendant, further answering, denies that it is necessary or even proper for the protection of the interest of the holders of any of said bonds and coupons secured by said mortgage or for the protection of any other person or persons interested in the property of the defendant, the Kansas City Suburban Belt Railroad Company, that a receiver or receivers of its property should be appointed; but states and shows that, upon the contrary, there are no obligations against the said defendant, the Kansas City Suburban Belt Railroad Company, including the unpaid interest on any of said bonds —if any such interest be unpaid—which could not be collected by the ordinary remedies at law, if the persons holding any such obligations would, in good faith, insist upon the payment thereof.

This defendant further answering, admits that the railroad and other property of the defendant, the Kansas City Suburban Belt Railroad Company, connects with certain other lines of railway constructed by the Kansas City & Independence Air Line, by The Union Terminal Railroad Company, and by the Consolidated Terminal Railway Company, prior to its consolidation as aforesaid; and admits that the said several properties are subject to separate mortgages; and admits that bills to foreclose each of said mortgages have been filed concurrently with the bill of complaint in this cause; but this defendant states and shows that the defaults alleged in the bill of complaint to have been made in the payment of interest on the bonds secured by the other said mortgages were collusively and fraudulently made, for the purpose of predicating foreclosure suits thereon, and that

all of said other foreclosure suits, together with this one, constitute one and the some collusive transaction, for the fraudulent purposes hereinafter stated. This defendant admits that the several railroads last above named, constitute, as they have heretofore been and are now oper-
701 ated, one entire and continuous system of railway; but this defendant denies that they constitute an indivisible system of railway, but states and shows, upon the contrary, that they are susceptible of being profitably operated separately; and denies that it is esential to the security of the holders of any of the bonds issued and certified under the mortgage herein sought to be foreclosed or of any other person or persons, interested in the premises, that receivers should be appointed for all or any of said lines of railway.

This defendant further answering, admits that it was provided in the said mortgage that the words "the trustees" when and as used in the mortgage, should—for all purposes—be taken and construed to mean the corporation or person charged for the time being, with the execution of the trust created by the mortgage—whether the same be this defendant and the complainant, or any successor of them; but denies that it is provided in said mortgage that either of said trustees might be removed by a majority in interest of the holders of all bonds then outstanding, and denies that upon such removal of either of said trustees, another might be substituted in its stead but states and shows that it is provided by said mortgage that both of said trustees might be so removed and another appointed as successor to both trustees so removed; and it is the true intent and meaning of said mortgage that both of said trustees should act jointly and that neither should separately have and exercise any of the powers of the mortgage, and that only in case of the removal of both trustees by majority of outstanding bonds, could a successor be appointed and that then such successor must be some corporation or person having power to act, other than either this defendant or the complainant; but this defendant denies that on the 31st day of August, 1900, or at any other time, a majority in interest of the holders of the onds secured by said mortgage and then outstanding, did by proper instrument in writing, under the hands and seals of said holders or otherwise—remove this defendant from its position,
702 office, powers or authority as such trustee; and denies that this defendant was, or at any time has been, removed from its said position as trustee under said mortgage or deed of trust, or otherwise divested of any right, power,

authority, title or interest which it had and held by reason of the terms and provisions of said mortgage; and this defendant denies that after the alleged removal of this defendant from its position as trustee, or at any other time, the majority in interest of the holders of all said bonds secured by said mortgage or deed of trust and then outstanding, did—by an instrument in writing, under the hands and seals of such holders—appoint and designate the complainant, The Provident Life & Trust Company of Philadelphia, as the successor trustee under the said mortgage or deed of trust; and denies that the complainant thereupon, or at any time or by any means whatever, became invested with the rights, powers, duties or authority conferred upon the trustees or their successor by the terms of the said mortgage.

The defendant further answering states, that if any attempt was made by any person or persons claiming to hold any of the said bonds, to remove this defendant as trustee (which this defendant does not admit, but denies); and that if any attempt was made by any person or persons claiming to hold any of said bonds to appoint and substitute the complainant as successor to this defendant as such trustee (which this defendant does not admit, but denies)—that each and both of said attempts were wholly made without power or authority, and were made, if at all, by persons not the holders of any bonds then outstanding within the meaning of the terms of the mortgage.

This defendant further answering, states and shows that the complainant, The Provident Life & Trust Company, is a corporation organized under the laws of the State of Pennsylvania, with its principal office in Philadelphia, in said state; and that by a statute duly enacted by the Legislature of the State of Missouri, the said complainant has no authority of law, alone, to accept or to in any way undertake to en-
703 force any of the powers and duties conferred by the said mortgage upon this defendant and the complainant, jointly, as trustees, or their successors. This defendant further states and shows that it is expressly provided by the statutes of the State of Missouri, which were in force long prior to the time of the alleged appointment of the complainant as successor to this defendant, as trustee in said mortgage—and which are still in force, as follows:

"No foreign corporation or individual shall act as trustee in any deed of trust or other conveyance hereafter made by any person, firm or corporation, whereby any property, real or personal, situate or being in this state, is hereafter con-

veyed in trust for any purpose whatever, unless in such conveyance there shall be named as co-trustee a corporation organized under the laws of this state and having power to act as trustee and execute trusts or any individual citizen of the State of Missouri. No suit shall be brought to foreclose any such deed of trust, unless a resident trustee shall be a party plaintiff."

The true intent and meaning of which provision of the statute of the said State of Missouri is—that no corporation of any state, other than that of the State of Missouri, should—after the enactment of said law—be appointed as sole trustee in any mortgage or deed of trust which conveyed property situated in the State of Missouri; and that no corporation of any state other than that of Missouri, should—as such sole trustee—be permitted to institute any suit to foreclose any such deed of trust. Wherefore, this defendant says that the complainant, at the time of its alleged appointment, did not have, and has not now, the lawful power to execute or seek the execution of the trust conferred upon it and this defendant, jointly, by said mortgage.

This defendant, further answering, denies that default was made in the payment of the installment of interest on said bonds secured by the mortgage which became due and payable on the first day of February, 1900, or that default was made in the payment of any part thereof; and denies that there was or is any default in
704 the installment of interest falling due August 1st, 1899, except for the eighteen hundred and twenty-five ($1825) dollars of coupons held by this defendant as aforesaid; and denies that the payment of either of said installments or any part thereof was, in any manner, demanded at the time and place fixed for the payment thereof; and denies that any such default continued for the period of six months or more; and denies that there was any default whatever after presentation and demand, that could continue for said time or any other time; and denies that the complainant as such trustee or otherwise, elected—or that it now elects—on account of such alleged defaults and continuance thereof—that the principal of said bonds should become immediately due and payable; and denies that a majority in interest of the holders of all of said bonds, at the time outstanding, did, by instrument under their hands and seals, or otherwise, instruct the complainant, as such trustee, to declare the said principal of said bonds due and payable.

This defendant admits that no proceedings at law or suits in equity have been begun or commenced by the complainant

or by this defendant as trustees under said mortgage, or by the holder of any of said bonds or coupons secured by said mortgage to in any way enforce the collection or payment of said bonds or coupons, except this suit; and admits that the amount in controversy exceeds the sum of five thousand dollars ($5000.00).

This defendant denies that the complainant, even if it were the lawful trustee by substitution, as it claims (which this defendant denies), is remediless in the premises, at and by the strict rules of the common law, and is relievable only in a court of equity; and states and avers that all of the interest on all of the said bonds, which is alleged in the bill to have been defaulted, could have been collected, and would have been paid if the complainant, or if the holders of the said coupons had, in good faith, demanded the payment thereof, or if they, or the trustees, had instituted suits
705 at law to recover the payment thereof.

This defendant further answering, states and shows that it is a creditor of the defendant, the Kansas City Suburban Belt Railroad Company, to the extent of four hundred thousand dollars ($400,000) or more;

That the indebtedness of the said defendant, the Kansas City Suburban Belt Railroad Company, to this defendant, is —as to the greater part thereof—evidenced by and consists of certain negotiable promissory notes heretofore, for value received, duly executed and delivered by the Kansas City Suburban Belt Railroad Company, to your petitioner, to-wit: A note dated March 31, 1899, due July 12, 1899, for fifty thousand dollars ($50,000) with interest at the rate of six per cent (6%) per annum from said date. On this note there was credited on June 14, 1900, twelve thousand five hundred dollars ($12,500).

Note dated November 7, 1899, due January 9, 1900, for fifty thousand dollars ($50,000) with six per cent (6%) interest per annum from said date. On this note was credited, on June 14, 1900, twelve thousand five hundred dollars ($12,500). Note dated July 26, 1899, payable on demand, for two hundred and three thousand nine hundred dollars ($203,900) with interest at the rate of six per cent (6%) per annum from date. On this note was credited on July 11, 1900, nine thousand, nine hundred and ninety-six and 65-100 dollars ($9996.65).

Note dated September 21st, 1899, payable on demand for twenty-three thousand and fifty-six and 48-100 dollars ($23,

056.48) with interest thereon from date at the rate of eight per cent (8%) per annum.

Note dated October 23, 1899, due on demand for seven thousand one hundred and sixty-two and 40-100 dollars ($7,162.40) with interest thereon at the rate of eight per cent (8%) per annum from date.

Note dated June 11, 1900, due October 11, 1900, for ten thousand four hundred dollars ($10,400) with interest at the rate of.....per cent from.....

706 And a note dated May 25, 1900, due September 25, 1900, for twenty-five thousand dollars ($25,000) with interest thereon at the rate of.....per cent from.....

That this defendant holds and owns fifteen hundred and twenty-seven (1527) interest coupons duly issued by a corporation known as The Union Terminal Railroad Company, aggregating thirty-eight thousand one hundred and seventy-five dollars ($38,175), which matured August 1, 1899—the payment of which coupons is duly guaranteed by the defendant, Kansas City Suburban Belt Railroad Company—and also holds and owns seventy-three (73) interest coupons duly issued by a corporation known as the Consolidated Terminal Railway Company, of Kansas City, aggregating eighteen hundred and twenty-five dollars ($1825) which matured August 1, 1889, the payment of which coupons was duly guaranteed and assumed by the said defendant, Kansas City Suburban Belt Railroad Railroad Company.

That the remainder of said indebtedness consists of open book accounts. That frequent demand has been made by this defendant on the said defendant, the Kansas City Suburban Belt Railroad Company, for the payment of each and all of said notes and said open book accounts; but said defendant has heretofore failed and refused to pay the same; that the same are now long since due and payable.

That the payment of the said indebtedness was heretofore partially secured by the pledging of certain stocks, bonds and other personal property by the Kansas City Suburban belt Railroad Company to this defendant, as collateral security to and for said indebtedness; but the said collateral security was and is wholly insufficient to secure the payment of the whole of said indebtedness; and if this defendant were at liberty to enforce its rights against said collateral security, it could not, under the most favorable conditions, realize therefrom enough to pay more than one-fourth (1/4) of said

indebtedness; that the remainder of said indebtedness is wholly unsecured.

707 That the said defendant, the Kansas City Suburban Belt Railroad Company, by collusion with and in the name of one of its other creditors, to-wit: The Cambria Steel Company, did, on the 6th day of September, 1900, cause your petitioner to be temporarily restrained and enjoined, by order of this court, from enforcing its rights against any of the stocks, bonds and other personal property so pledged as collateral security for said indebtedness, and from in any way selling or disposing of any part thereof, so as to apply the proceeds thereof towards the payment or reduction of said indebtedness; and the said temporary restraining order of this court is still in force.

This defendant, further answering, states and shows that on April 1st, 1899, and prior thereto, the Kansas City Pittsburg & Gulf Railroad Company, a Missouri corporation, was operating a railroad from Kansas City, Missouri, to Port Arthur, Texas; and under a rental contract, was using the lines, tracks, station houses, yards and depots of the said defendant, the Kansas City Suburban Belt Railroad Company, as its terminals at Kansas City; and was using the canal of the Port Arthur Channel and Dock Company, in Texas, as its southern terminals, so as to get its freight to and from the open sea.

That on April 1, 1899, the said Kansas City, Pittsburg & Gulf Railroad Company, defaulted in the interest on its mortgage bonds, and a suit to foreclose its mortgage on account of said default, was instituted in this honorable court, on the 6th day of April, 1899, and receivers were appointed to operate the road pending the foreclosure.

That a certain number of persons, about that time, got together and appointed themselves as a committee, hereinafter called the Philadelphia Committee, to reorganize the said Kansas City Pittsburg & Gulf Railroad Company, and readjust its securities so that it would thereafter be burdened with a less interest charge and one clearly within its ability to earn; that said Philadelphia Committee, after some resignations and substitutions, was composed of William F.
Harrity, A. Heckscher, Herman Sielcken, William Ed-
708 enborn, Max Pam, Samuel R. Shipley, Silas Petitt, and Winthrop Smith. That the said Philadelphia Committee in pursuance of its said purpose, adopted and published a plan and agreement for the reorganization of the said Kansas City, Pittsburg & Gulf Railroad Company and

the said terminal companies, which provided among other things, for the formation of a new railroad company, which would issue its bonds and stocks in exchange for the bonds and stock of the said Kansas City, Pittsburg & Gulf Railroad Company, and in exchange for the stocks and bonds of the said defendant, the Kansas City Suburban Belt Railroad Company, and the said Port Arthur Channel and Dock Company, in order, as stated in said published plan, "to merge these three corporate managements into one, so that the system shall be capable of operation as a whole, under one management, from Kansas City to the ship's side at Port Arthur;" so that the said new railroad company which would, after the reorganization, own the main line and property of the Kansas City, Pittsburg & Gulf Railroad Company, would also own the bonds and capital stock of the Kansas City Suburban Belt Railroad Company and of the Port Arthur Channel and Dock Company; and that thereby "all three properties would be under one corporate ownership, management and control;" and that the bonds and stock of the said Belt Company and the said Channel Company, so to be bought by the said new company and converted into its own stock and bonds, would be pledged by said new company as security for the bonds to be issued by it.

That the complainant in this cause, The Provident Life & Trust Company, was a party to said plan and agreement of reorganization, and its President, Samuel R. Shipley, was a member of said Philadelphia Committee.

That the said Phildelphia Committee, in the furtherance of its said plan of reorganization, caused the proposed new railroad company to be incorporated under the laws of the state of Missouri, under the name of The Kansas City Southern Railway Company, and placed three of its members
709 on the board of directors of said new company, and two others of its members, one of whom is the said Samuel R. Shipley, president of the complainant aforesaid, on a board of voting trustees, who were to be and are vested with the absolute and unlimited power of voting all of the stock of the said Kansas City Southern Railway Company for the next five years.

That this defendant has not a copy of said published plan and agreement of reorganization, which it can file with this answer, but states that both the complainant and defendant, the Kansas City Suburban Belt Railroad Company, have

copies of said plan and agreement, and are fully advised as to the contents thereof; and this defendant asks leave to hereafter file copy of said plan and agreement for the information of your Honors, if and when desired.

That the said Philadelphia Committee, for and on behalf of the said Kansas City Southern Railway Company, as well as on its own ccount, did invite and request the owners and holders of the stock and bonds of the said Kansas City, Pittsburg & Gulf Railroad Company, the Port Arthur Channel & Dock Company, the said Consolidated Terminal Railway Company, and the said Kansas City Suburban Belt Railroad Company, to deposit their said stock and bonds with The Provident Life and Trust Company, the above named complainant, and to receive in payment therefor the stock and bonds of the said Kansas City Southern Railway Company, at a ratio prescribed in said published plan.

That in response to said invitation and request, the respective owners and holders of the stock and bonds of all of said companies, and particularly of said defendant, Consolidated Terminal Railway Company, and the Kansas City Suburban Belt Railroad Company, did deposit with said complainant, The Provident Life and Trust Company, for the purpose of converting them into the stock and bonds of said Kansas City Southern Railway Company, to the end that the said purposes of said reorganization plan might become effective and be carried out, their said stocks and bonds in sufficient
710 quantities to enable said Philadelphia Committee to consummate its said plan of reorganization; and the same was thereupon declared effective and carried out as proposed.

This defendant further answering, states that the owners and holders of the stock of the Kansas City Suburban Belt Railroad Company, and of the bonds of said Consolidated Terminal Railway Company, in response to such invitation and request, did deposit with the complainant, The Provident Life and Trust Company, of Philadelphia, seven hundred and thirty-four (734) bonds out of a total issue of seven hundred and fifty (750) bonds of the said Terminal Company; and forty-six thousand nine hundred and sixty (46,960) shares of stock out of a total issue of forty-seven thousand five hundred (47,500) shares, of the Kansas City Suburban Belt Railroad Company; that the said complainant, for and on behalf of said Kansas City Southern Railway Company, did pay for said stock and bonds so deposited with it as aforesaid in the stock and bonds of said Kansas City

Southern Railway Company, and did duly deliver the said stock and bonds so purchased to the last named company, who then and thereby became the holder of the said stock and bonds, for the purposes expressed in the said plan of reorganization, namely, for the purpose of merging the railroads, and properties of the said Kansas City, Pittsburg & Gulf Railroad Company, the said Kansas City Suburban Belt Railroad Company including said Terminal Company, and the Port Arthur Channel and Dock Company, into one ownership, management and control, to-wit: into the ownership, management and control of the said Kansas City Southern Railway Company and for no other purpose whatsoever.

That after having so acquired and converted the said stock and bonds, the said Kansas City Southern Railway Company lodged them with the Mercantile Trust Company, of New York, one of the trustees of its mortgage, as collateral security for its bonds, where they are now held for that purpose and no other.

This defendant, further answering, states that after
711 the said Kansas City Southern Railway Company, had so acquired the said bonds and the stock of the said defendant, the Kansas City Suburban Belt Railroad Company, which was substantially all of said stock and bonds, and had converted the same to its own stock and bonds, and had pledged them as collateral security as aforesaid, to-wit: on or about the first of April, 1900, a majority of the then directors and officers of the Kansas City Suburban Belt Railroad Company resigned their respective offices, and persons who were directors, officers and agents of the said Kansas City Southern Railway Company. were chosen in their stead, so that from that time ever since, the said Kansas City Southern Railway Company and the said Philadelphia Committee have had and exercised the full and unrestrained control, direction and management of all the corporate affairs of the said defendant, the Kansas City Suburban Belt Railroad Company.

That on or about the said first day of April, 1900, said Kansas City Southern Railway Company in pursuance of the said plan of reorganization, took actual possession of all the railroad, tracks, shops, depots, station houses, rolling stock and other equipment and appliances of said defendant, the Kansas City Suburban Belt Railroad Company, including the said Terminal Railroad, and has ever since that time been, and still is, managing, controlling and operating the same, and receiving and (collecting) all the earnings and income thereof.

This defendant further answering, states that it was a part of the plan and agreement of reorganization that the said Philadelphia Committee should cause a syndicate of capitalists to be formed, who would buy enough of the stock and bonds of the said Kansas City Southern Railway Company which would not be needed to retire and convert the stock and bonds of the old companies sought to be unified, and pay off and discharge all of the floating or unsecured debts and obligations of all of the old companies including those of the said defendant, the Kansas City Suburban Belt Railroad Company; that said part of said plan was carried out to the extent that such a syndicate was formed and enough of
712 the securities of the Kansas City Southern Railway Company were sold to said syndicate to provide money to satisfy and discharge all the floating and unsecured debts and obligations of all of said companies so sought to be united under the ownership and control of the said Kansas City Southern Railway Company, including all the floating and unsecured debts of the said defendant, the Kansas City Suburban Belt Railroad Company; but the said Philadelphia Committee and the said Kansas City Southern Railway Company, which it controls, have wrongfully withheld said money, and have unlawfully and fraudulently failed and refused to apply the same to the purposes for which it was raised, to-wit: to the payment of the said floating and unsecured debts and obligations of the defendant, the Kansas City Suburban Belt Railroad Company, and the other old companies, so amalgamated as aforesaid under the said plan of reorganization.

This defendant, further answering, states and shows that one Max Pam, of Chicago, Illinois, was and is a member of said Philadelphia Committee and was and is also a member of the board of directors of the said Kansas City Southern Railway Company and a member of its executive committee; that the said Max Pam was and is the general counsel and legal adviser of the said Philadelphia Committee and the general counsel and legal adviser of the said Kansas City Southern Railway Company, and was and is also the general counsel and legal adviser of the said defendant, the Kansas City Suburban Belt Railroad Company, and as such had and has the general supervision, direction and control of the affairs and legal proceedings of said Philadelphia Committee and of both of said last named railroad companies, including the question as to which of their debts, if any, they should pay, and which of their debts they should avoid or escape the payment of, and of the legal proceedings necessary to ac-

complish the avoidance or escape of the payment of such debts.

That C. W. Lucas, who entered the appearance of the said defendant, the Kansas City Suburban Belt Railroad
713 Company, in this court, in this cause, and who—on its behalf—consented to the appointment of receivers of its property is an appointee of the said Max Pam, as an assistant attorney for the said Kansas City Southern Railway Company, and the said defendant, the Kansas City Suburban Belt Railroad Company, and his salary is fixed by, and is dependent upon the wishes and word of the said Pam; and that his said action in appearing for said defendant and consenting to the appointment of receivers was in obedience to the direction of the said Max Pam, and in accordance with the wishes and for the furtherance of a fraudulent purpose wrongfully and wickedly conceived by the said Philadelphia Committee, the Kansas City Southern Railway Company, and the defendant, the Kansas City Suburban Belt Railroad Company, to avoid and escape the payment of the unsecured debts of the said defendant by means of the fraudulent and collusive practice and proceedings hereinafter stated.

This defendant further answering, states and shows that the said defendant, the Kansas City Suburban Belt Railroad Company, never at any time prior to its said absorption by and amalgamation with the said Kansas City Southern Railway Company, made any default in the payment of the installments of interest on any of its said bonds; and that it is wholly untrue, as alleged in the said bill of complaint, that the said defendant made default in the payment of eighteen hundred and fifty dollars ($1850) of said interest maturing on August 1st, 1899, upon any presentation or demand for said interest; that upon the contrary, all of the interest coupons maturing on any of said bonds on August 1st, 1899, which were properly presented at the specified place for payment were paid and satisfied—all of which was well known to both the complainant herein and the defendant, the Kansas City Suburban Belt Railroad Company, prior to and at the time of filing the bill of complaint in this cause.

That by the reason of the facts that the said Kansas City Southern Railway Company, prior to February 1st,
714 1900, owned and still owns seven hundred and thirty-four (734) of said bonds, and owns all or substantially all, of the stock of the Kansas City Suburban Belt Railroad Company and has deposited the same with the said Mercantile Trust Company as collateral security to the bonds

issued by the said Southern Railway Company, to be held by said pledgee until default be made in the payment of the interest on the bonds issued by the said Southern Railway Company, and that no default has been made in respect of said Southern Railway Company's bonds; and that said Southern Railway Company has been, and is in the possession, control and active operation of all of the railroad and other property of the said defendant, Kansas City Suburban Belt Railroad Company, receiving the earnings and income thereof as aforesaid—there was not and could not have been any such default in the payment of said interest maturing on February 1st, 1900, or August 1st, 1900, on said seven hundred and thirty-four (734) bonds, as would entitle the said Kansas City Southern Railway Company, as the holder of said bonds and coupons, or the said complainant, at its request, to a foreclosure of said mortgage.

This defendant further answering, states and shows to the court that by reason of the fact that the said Kansas City Southern Railway Company and the said Philadelphia Committee completely dominate, control and direct the action of the defendant, the Kansas City Suburban Belt Railroad Company, the said Kansas City Southern Railway Company, whenever it suits its pleasure or purposes to do so, puts into the treasury of the Kansas City Suburban Belt Railroad Company whatever moneys it desires to put in; and whenever it suits its pleasure or purposes, it takes out of the treasury of said Belt Railroad Company whatever moneys it sees fit, and applies the same to whatever purposes it desires—so that the said defendant, the Kansas City Suburban Belt Railroad Company is not left free to pay the debts and obligations which it owes, including the interest on the said bonds, as well as the debts due to its unsecured creditors, but must and does act, in respect to any and all of said
715 interest and debts—as the said Kansas City Southern Railway Company and the said Philadelphia Committee desire and direct it to act.

That the income and earnings of the said defendant, the Kansas City Suburban Belt Railroad Company, over and above its operating expenses and taxes, have been and are amply sufficient to promptly meet all of the interest on all of its bonded indebtedness; and if there was or could have been a default in the payment of all or any of the interest on any of said bonds on February 1st or August 1, 1900, said default was purposely, fraudulently and collusively made by the said defendant, the Kansas City Suburban Belt Railroad Company at the dictation and direction of the said Philadel-

phia Committee and the Kansas City Southern Railway Company, who dominate, control and direct its actions, as aforesaid, by unlawfully and fraudulently withholding the earnings properly applicable to the payment thereof.

This defendant further answering states and shows that for the fraudulent purpose of avoiding payment of the floating and unsecured indebtedness of the said defendant, the Kansas City Suburban Belt Railroad Company, the said Kansas City Southern Railway Company and the said Philadelphia Committee, and the said defendant, the Kansas City Suburban Belt Railroad Company, being so dominated, directed and controlled as aforesaid, fraudulently and collusively conspired to make and establish a default in the payment of the interest on said bonds, and to bring about an apparent declaration of the maturity of the principal thereof; and thereafter, to deceive the court into assisting them to defraud said unsecured creditors, caused the said suit to be instituted to foreclose the said mortgage, so as to cut out and defeat the creditors of the said defendant, the Kansas City Suburban Belt Railroad Company, whose debts are unsecured; and that the said complainant, on account of its intimate connection with and interest in their affairs, willingly consented to become a party thereto and a participant therein; but this defendant states and shows that the said
716 alleged defaults in the payment of the interest on said bonds, and the alleged declaration of the maturity of the principal thereof, were false and fictitious, and colorable only, and were brought about by the fraudulent and collusive acts of the said complainant, and of the said defendant, Belt Company, at the direction and suggestion of the said Kansas City Southern Railway Company, and the Philadelphia Committee, for the fraudulent purpose aforesaid.

This defendant further states and shows that the defendant, the Kansas City Suburban Belt Railroad Company, by reason of its being dominated and controlled by the said Kansas City Southern Railway Company, and by the said Philadelphia Committee, will not, in good faith, resist or defend against the foreclosure of the said mortgage, but will fraudulently and collusively consent and permit the said fictitious and colorable defaults and breaches of said mortgage to pass before the court unchallenged, to the end that the relief prayed for by the bill of complaint in this cause may be granted and that the fraudulent purposes aforesaid may be carried out and consummated.

All of which this defendant is ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and to the end that the fraudulent and collusive purposes aforesaid may be prevented, hereby prays that it may be allowed to aver, maintain and prove them, on its own behalf, as well as on behalf of any other unsecured creditors of the said defendant, the Kansas City Suburban Belt Railroad Company, who may be willing to join herein and share the expense hereof; and hereby prays that the said bill of complaint may be dismissed and that this defendant may have and recover its costs and expenses incurred in making the defense.

GUARDIAN TRUST COMPANY,
By Wing & Chadbourne,
Trimble & Braley,
Its Solicitors.

Filed November 5, 1900.

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717 J. C. ROSENBERGER, resuming the stand on behalf of the Guardian Trust Company, further testified in substance as follows:

This is relating to Items Nos. 441 to 444 in the account, the Wollman, Solomon & Cooper items: at the time I was employed in December, 1904, by Mr. Mecartney to assist him in the Guardian Trust Company-Cambria-Kansas City Suburban Belt litigation, there was turned over to me and I was put in charge of a matter known as the $132,000.00 switching charge item, which up to that time had been in charge of Wollman, Solomon & Cooper. The general nature of that matter was this:

Shortly before receivers were appointed, in April, 1899, for the Kansas City Suburban Belt Railroad Company, being indebted to the Guardian Trust Company—an indebtedness involved in this Cambria suit—transferred and assigned to the Guardian Trust Company as collateral security for that indebtedness an open account or bill held by the Suburban Belt Railroad Company against the Kansas City, Pittsburg & Gulf Railroad Company in amount $132,628.60 for terminal facilities and switching services rendered by the Belt Company to the Pittsburg & Gulf Railroad Company and for labor and material furnised by the Belt Company to the Pittsburg & Gulf. That assignment made by the Belt Company to the Trust Company was in writing. When receivers were appointed for the Pittsburg & Gulf in April, 1899, the Trust Company, to protect and safeguard this 132 odd

thousand dollar claim, filed an intervention in the Pittsburg & Gulf receivership, the object and purpose of which was to declare their claim for switching and terminal facilities, and so forth preferential over the general mortgage of the Pittsburg & Gulf Railroad Company, upon the theory that the Gulf Company had no entrance or terminal facilities into Kansas City and was dependent wholly upon the Suburban Belt for terminal facilities and that the services rendered and material furnished mentioned in the Belt Company's bill or account were necessary to keep the Gulf Company in operation and to enable it to perform its public obligations.

718 That was one branch of the controversy.

This Cambria litigation commenced on September 6, 1900. In 1905 the Southern Company filed its intervening petition in the Cambria suit which, among other things, sought to deprive the Guardian Trust Company of that bill or claim for 132 odd thousand dollars. The theory of the Southern Company's petition being, that as the successor company to the Kansas City Suburban Belt Railroad Company it had acquired all of the rights and equities of the Suburban Belt Company and that in the reorganization the Southern Company had acquired all of the bonds of the Kansas City Suburban Belt Railroad Company and was, in effect, the sole bondholder of the Belt Company and that as such and as the purchaser at the foreclosure sale of the Belt Railroad Company and its constituent railroad companies, it became entitled to assert all of the rights of the mortgagees in the general mortgage of the Belt Company. It claimed further that this item of $132,000.00. switching charges, came within the lien of the after acquired property clause of the Belt mortgage and that being subject to their lien the rights of the Southern Company were prior in law and superior in equity to that of the Guardian Trust Company and that the Guardian Trust Company should be required to surrender and turn over their claim to the Southern Company and should be divested of its interest therein. Now that was the controversy.

As I have already indicated, insofar as the Trust Company was seeking a preferential lien over bondholders in the Pittsburg & Gulf receivership that matter was wholly in charge of Wollman, Solomon & Cooper and when I was employed they conferred with me and turned over some papers in the matter, such as they had, and I find in my files a duplicate original of an amended and supplemental intervening petition of the Guardian Trust Company as assignee of the claim of the

Kansas City Suburban Belt Railroad Company above referred to filed in the Pittsburg & Gulf receivership case.

719 Mr. Rosenberger: My recollection is it was filed June 8, 1900.

The Master: No file mark on it?

Mr. Rosenberger: This is not the original; that is in the court. If desired the original can be substituted.

Mr. Smith: We will agree on that date if you say that is the date.

The Master: Do you say that is the date?

Mr. Rosenberger: I can only give my recollection on it. I have a memorandum on the copy here showing "Filed July 6, 1900."

Mr. Smith: That is satisfactory to me. If the correct date is hereafter ascertained to be different you can correct it.

The Master: Yes. That is offered in evidence?

Mr. Rosenberger: Yes.

Said duplicate original of an amended and supplemental intervening petition of the Guardian Trust Company as assignee of the claim of the Kansas City Suburban Belt Railroad Company, is received in evidence by the Master, and is in words and figures as follows, to-wit:

Amended and Supplemental Intervening Petition of the Guardian Trust Company, Assignee of the Claim of the Kansas City Suburban Belt Railroad Company.

"In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

The State Trust Company, Complainant,
No. 2331 vs. In Equity.
Kansas City, Pittsburg & Gulf Railroad Company, Missouri, Kansas & Texas Trust Company, Texarkana & Fort Smith Railway Company, Kansas City, Shreveport & Gulf Railway Company, and Kansas City Southern Railway Company, Defendants.

The amended and supplemental petition of the Guardian Trust Company, assignee of the claim, demand and intervening petition of the Kansas City Suburban Belt Railroad Company, filed herein, respectfully shows to the court as follows:

First. That since the filing of the original intervening petition of the Kansas City Suburban Belt Railroad Company, in the above entitled cause, the claim, demand, account and cause of action, and all rights thereunder, of the said Kansas City Suburban Belt Railroad Company, have been duly and legally transferred, assigned and set over for a good, valuable and sufficient consideration, to the Guardian Trust Company, a corporation duly organized, created and existing under and by virtue of the laws of the State of Missouri, and which said assignment and transfer was duly made by said Kansas City Suburban Belt Railroad Company by its duly authorized President and Secretary, and which transfer and assignment fully cover the accounts, claims, demands and cause of action set forth in said intervening petition against the Kansas City, Pittsburg & Gulf Railroad Company, and which assignment was a writing, a copy of which is hereto attached, marked "Exhibit A" and made a part of this petition.

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Second. Said intervener repeats and adopts each and all of the allegations and averments set forth and contained in the intervening petition of the Kansas City Suburban Belt Railroad Company except the averment that said Kansas City Suburban Belt Railroad Company is now the owner of said claim and demand, and respectfully asks that said intervening pettiion of the Kansas City Suburban Belt Railroad Company may be herein referred to as a part of this amended and supplemntal intervening petition of the Guardian Trust Company.

Third. Your orator shows to the court that on the Fifth (5th) day of February, 1900, the final decree of foreclosure and sale was entered in said action, and by the terms and provisions of Subdivisions Four (4) and Five (5) of Section Fifteen (15) of said decree, it was ordered: '(4) That any unpaid indebtedness or liability contracted or incurred by said Kansas City, Pittsburg & Gulf Railroad Company in the operation of its railroad, payment whereof was provided for in Paragraph Six (6) of the order appointing the Receivers herein, and which is prior in lien or superior in equity to the said mortgage of April 1st, 1893, upon its being finally adjudged to be thus prior in lien or superior in equity to said mortgage, and directing the payment thereof—'

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'(5) Any unpaid indebtedness or liability contracted or incurred by said Kansas City, Pittsburg and Gulf Railroad

Company, which may be finally found and decreed to be prior in lien or superior in equity to said mortgage of April 1st, 1893, and all payments made upon such claims by the purchaser or purchasers in advance of the final accounting and discharge of the Receivers, shall be treated as advances by him or them in the final adjustment, upon such accounting.'

That Subdivision Three (3) of Section Twenty-one (21) of said decree, with respect to the distribution of the proceeds of sale, is as follows: '(3) To the payment of the claims of the classes specified in Subdivision Four (4) and Five (5) of Paragraph Fifteen (15) hereof reference is here made.' And your orator prays leave to refer to the whole of said decree as entered in said cause, with like effect as though the same were literally copied herein.

Fourth. Your petitioner further shows that under said foreclosure proceedings, the said Kansas City, Pittsburg and Gulf Railroad and all its property, both real and personal, were duly sold under the order of this Court, and that the sale of said property of said Kansas City, Pittsburg and Gulf Railroad Company covered by the mortgage or deed of trust set forth in the bill of complaint filed herein, took place at the City of Joplin, State of Missouri, on the 19th day of March, 1900, said sale being conducted by Special Master appointed by this court, Edward H. Stiles.

At the instance of the reorganization committee which had been theretofore formed, and which was familiarly known as the Philadelphia Committee and located in the City of Philadelphia, Pennsylvania, certain of its members bought in the property covered by said mortgage for the sum of Two Million, Five Hundred Thousand Dollars ($2,500,000.00). That said bid was immediately thereafter assigned and set over by said purchasers to the Kansas City Southern Rail-
722 way Company—a company which the reorganization committee had caused to be organized under the laws of the State of Missouri, in pursuance of a general plan and purpose, with a capital stock of Fifty-one Million Dollars ($51,000,000) Twenty-one Million Dollars ($21,000,000.00) preferred stock and Thirty Million ($30,000,000) common stock—the shares being of the par value of One Hundred Dollars ($100) each.

That thereupon, upon the report of said Master, and to-wit, on the 20th day of March, 1900, said sale was confirmed, and said Special Master directed by said court to make a deed pursuant to said foreclosure and sale to said Kansas City

Southern Railway Company, which has undertaken and intends to carry out the said reorganization plan of said Philadelphia Committee, by the issuance of its bonds and stocks according to said plan.

That the purchase price of said road at said foreclosure sale was settled by the delivering of about Twenty-three Million Dollars ($23,000,000) of bonded indebtedness of said Kansas City, Pittsburg and Gulf Railroad Company, and the further payment of Thirty-eight Thousand Dollars ($38,000) supposed to be sufficient to pay the holders of the bonds who had not deposited their bonds with said Reorganization Committee their proportionate share of the purchase price of said road.

That a Master's deed has been made to the Kansas City Southern Railway Company, as decreed by this court, and said sale has been confirmed, and said Kansas City Southern Railway Company has entered its appearance in this cause, and has been ordered to be and has been made a party to the same.

Fifth. Your petitioner further avers that under the plan or reorganization hereinbefore referred to, Three Million, Five Hundred Thousand Dollars ($3,500,000) in money has been provided for the treasury of said new company,
723 by the sale of Three Million Dollars ($3,000,000) of the First Mortgage Three Per Cent Bonds and Three Million Dollars ($3,000,000) preferred stock, and from Ten Dollars ($10) per share paid by the stockholders of the Kansas City, Pittsburg and Gulf Railroad, the sum of Two Million, Four Hundred Thousand Dollars ($2,400,00) has been realized—making a total sum of Five Million, Nine Hundred Thousand Dollars ($5,900,000).

That the reorganization plan contemplated and provided for the payment, among other things, of the floating debt of said Kansas City, Pittsburg & Gulf Railroad, of which the said supplies furnished by your petitioner and used in the maintenance and operation of said road, and also all traffic balances due to the said Kansas City, Suburban road, and also all traffic balances due to the said Kansas City Suburban Belt Railroad Company, and terminal facilities furnished the said Kansas City, Pittsburg and Gulf Railroad Company, and the use of the locomotives and cars and the tracks of the Kansas City Suburban Belt Railroad Company, and the joint use by said Kansas City, Pittsburg and Gulf Railroad Company of the employes, warehouses, freight

depots, station houses, lunch rooms and other facilities, and other things furnished and paid for the said Kansas City, Pittsburg and Gulf Railroad Company, as fully set forth in said intervening petition, from a part. That the purposes for which said sum of money was to be used, was set forth in said plan and agreement, as follows:

'For the payment of car trusts and interest, adjusted to date of payment, say	$1,900,000.00
'For payment of Floating Debt	475,000.00
'For payment of Receivers' Certificates	800,000.00
'For payment of First Mortgage Coupons due April 1, 1899	575,000.00
'Working Capital and expenses of reorganization	2,150,000.00
Total	$5,900,000.00

That the sum and amount set forth in claim in the intervening petition of the Kansas City Suburban Belt Railroad Company herein, together with the exhibits thereto attached, are here referred to, with the same effect as if they were incorporated herein.

724 Sixth. Your petitioner further shows to the court that the said Kansas City Southern Railway Company has obligated itself and intends to and will carry out and execute the said reorganization plan by the issuance of said bonds and stock to the various parties in interest as set forth in the same; but your petitioner avers that it would be inequitable and unjust, under the circumstances herein set forth, that your petitioner should not be paid the amount of the indebtedness held by your petitioner against the said Kansas City, Pittsburg and Gulf Railroad Company, the same being a preferential claim; yet the said reorganization committee and said Kansas City Southern Railway Company have not paid to your petitioner said sums of money set forth in said intervening petitions, or any part thereof, and has not as yet acknowledged that the same should be paid, or promised to pay same within a reasonable length of time, although equitably and justly, as well as specifically bound so to do.

Your petitioner here refers to the published and printed plan or agreement of said Philadelphia Reorganization Committee, and prays leavve to refer to the same [within] the

same effect as if it were incorporated herein, and prays that it may be used by your petitioner as part of this amended and supplemental petition, and with the same effect as though literally and wholly copied herein.

Your petitioner further shows that the foreclosure proceedings so had in the above entitled cause, were for the benefit alone of the bondholders and stockholders of the said Kansas City, Pittsburg and Gulf Railroad Company, and under an agreement between the two, for the sale and purchase for both, with a view of thereby excluding from any interest in the property of the Kansas City, Pittsburg and Gulf Railroad Company all unsecured creditors. That the said Kansas City, Pittsburg and Gulf Railroad Company, before the foreclosure and sale of said railroad and its appurtenances, was largely indebted to divers unsecured creditors, including the claim of your intervening petitioner the amount of which unsecured indebtedness this your petitioner is unable to state, but is advised and informed, and verily believes that the same far exceeds Four Hundred and Fifty Thousand Dollars ($450,000).

And your petitioner further shows that the said bondholders of the Kansas City, Pittsburg and Gulf Railroad Company, and the said Kansas City, Pittsburg and Gulf Railroad Company, through its stockholders, entered into an arrangement or agreement, as set forth in said reorganization plan, for the purpose of procuring the sale of the said property of the said Railroad Company and its purchase by and in behalf of the parties entering into such combination and reorganization thereof, and the issuing of stock to said parties, including said stockholders, without the payment of the debts and liabilities of said company, and for the purpose of hindering and delaying the said creditors, and with a view to prevent the collection or enforcement of such debts and liabilities; and that the said decree of sale was obtained by the said Kansas City, Pittsburg and Gulf Railroad Company and the said bondholders, in order to carry out such unlawful purpose, and to prevent the general or unsecured creditors of the said company from having an opportunity to be heard on the matters arising in said cause.

That the total amount of the claim as set forth in the original intervening petition of the Kansas City Suburban Belt Railroad Company, and as set forth in the exhibits thereto attached—all of which has been duly assigned and transferred to your petitioner, the Guardian Trust Company,

amounts to One Hundred and Thirty-two Thousand, Eight Hundred and Five and 44/100 Dollars ($132,805.44).

Wherefore, your petitioner prays that a decree and order be entered and made in this court, in said cause, ordering and directing that there be paid to your petitioner, out of the funds now or heretofore in the hands of said Receivers, or out of any funds realized from the sale of said property covered by said mortgage, or by the said Kansas City Southern railway Company out of its treasury or funds in
726 its hands, a sum sufficient to pay the amount of the claim and demand of the said Guardian Trust Company, assignee as aforesaid of said indebtedness, with interest thereon from the date of the respective accounts and the performance of the services and the receipt of the benefits as there alleged, amounting to the said sum of One Hundred and Thirty-two Thousand, Eight Hundred and Five and 44/100 Dollars ($132,805.44), and for such other and further relief as it may be entitled to in equity and good conscience.

WOLLMAN, SOLOMON & COOPER,
Solicitors for Guardian Trust Company, Waterworks Bldg., Kansas City, Mo."

Mr. Rosenberger: I wish to refer to Paragraph Six of the report of the Special Master Douglass in the Cambria Steel Company case, appearing on pages 896 and following of the record on appeal in Appeal No. 3489, in the United States Circuit Court of Appeals, 8th Circuit, in the case entitled "Central Improvement Company et al, appellants, vs. Cambria Steel Company, et al, appellees, and want to direct the special attention of the Master to it.

Said sixth paragraph of the report of Special Master Douglass in the Cambria Steel Company case was thereupon read to the Master by Mr. Rosenberger.

On cross examination by Mr. Smith, Mr. Rosenberger testified, in substance, as follows:

Mr. Smith: Mr. Rosenberger, do I understand you to say that this claim had been assigned by the Belt Company to the Trust Company prior to the appointment of receivers of the Pittsburg & Gulf Company?

Mr. Rosenberger: If I did so testify, I was mistaken about it. It was assigned after receivers were appointed for the Gulf Company.

Mr. Smith: Well, it was almost a year afterwards—wasn't it?

Mr. Rosenberger: That may be true.

Mr. Smith: When was it ascertained this claim amounted to $132,000.00?

727 Mr. Smith: When the Grannis case was filed on April 1, 1899, it was stated in that petition that the Pittsburg & Gulf was indebted to the Belt Company in the sum of $20,000.00.

Mr. Rosenberger: Well, I am sure that it would be impossible for me to answer any such question as that, because I had nothing to do with the Grannis case. The fact probably is, however, that this claim against the Gulf Company arose largely after the appointment of receivers for the Gulf Company and grew to its proportions that it had at the time it was assigned to the Trust Company by the Belt Company by the time the assignment was made. As I understand it, the Gulf Company after receivers were appointed quit paying its bills for terminal facilities.

Mr. Smith: Receivers were appointed April 1st, weren't they?

Mr. Rosenberger: If, as I stated, they were appointed in April, 1899, they naturally were.

Mr. Smith: This intervening petition was originally filed by the Belt Company itself, wasn't it?

Mr. Rosenberger: I am unable to tell you that.

Mr. Smith: And that claim was originally filed May 19, 1899?

Mr. Rosenberger: Well, I want you to carefully distinguish what you mean by "that" claim. If you speak of the claim filed by the Guardian Trust Company, of course, that was not filed by the Belt Company. The Belt Company may have undertaken to appropriate that claim by filing an intervening petition in its own behalf. What that petition was, I don't know anything about; had nothing to do with it.

Mr. Smith: Isn't it a fact if there was such a claim the Belt Company owned it on May 19, 1899?

Mr. Rosenberger: If that was before the date of the assignment of the claim to the Trust Company, of course, the Belt Company owned it at that time.

Mr. Smith: Isn't it a fact that the Belt Company originally filed this intervening petition and filed it on May 19, 1899?

728 Mr. Rosenberger: No, it is not so at all. I don't mean to imply the Belt Company didn't file some intervening petition in the Pittsburg & Gulf receivership; but I claim it did not set forth its claims in either manner or form as afterwards asserted by the Trust Company.

Mr. Smith: You misunderstand me; I am talking about this $132,000.00 claim; was that claim originally an intervening petition filed by the Belt Company against the Pittsburg & Gulf? Don't you remember that?

Mr. Rosenberger: I answer no, with this explanation: I have an impression that before the Belt Company assigned that claim of $132,000.00, which it held against the Gulf Company, to the Trust Company that the Belt Company itself asserted in the Gulf receivership suit priority over bondholders for that claim. But after the Belt Company assigned the claim to the Trust Company as collateral security the Trust Company proceeded in its own behalf and in its own way to assert that priority.

Mr. Smith: By independent intervention?

Mr. Rosenberger: By independent intervention.

Mr. Smith: Now don't you know, Mr. Rosenberger, that the history of that thing was that the Belt Company filed its claim on the 19th day of May, 1899, and that this claim was assigned by the Belt Company to the Trust Company about February 1, 1900, as collateral security for this claimed indebtedness of the Trust Company against the Belt Company, and that thereafter sometime prior to March 2, 1900, the Trust Company filed a petition to be substituted as intervener in place of the Belt Company?

Mr. Rosenberger: That is possibly true, but that is not inconsistent with what I have said.

Mr. Smith: I am just asking you if that is not the fact?

Mr. Rosenberger: I think that is true.

Mr. Smith: All of these claims, I mean all these intervening petitions in reference to this claim, were filed prior to July 4, 1900?

Mr. Rosenberger: No; the pleadings were amended a
729 number of times subsequently to the filing of the Cambria suit on September 6, 1900.

Mr. Smith: Didn't you just offer in evidence here—

Mr. Smith: Let me object to this answer and I will withdraw my question, if necessary to do it, because I don't want to go into any other pleadings.

Mr. Smith: What I am getting at is this: this original petition, which was filed May 19, 1899, and the substitution of the Trust Company for the Belt Company in that intervening petition and the amended intervening petition you have referred to in your testimony, were all filed on or before July 6, 1900?

Mr. Rosenberger: That is my recollection.

Mr. Smith: I want to ask you a couple of questions that do not have to do with this last matter: At the time the Mecartney case was argued in the Supreme Court of Missouri, Mr. Prescott was not then in charge of the litigation, was he? He had been removed or there had been a receiver appointed, or something had happened, he was not in charge?

Mr. Rosenberger: I will answer that question, subject to my objection to it as being immaterial, that he was not. Mr. Flower had been appointed receiver at the time of the argument of the Mecartney case in the Supreme Court and the counsel who had had charge of the Mecartney suit against the Guardian Trust Company had been Messrs. Gates & English up to the time that Mr. Flower was, on August 31, 1916, appointed receiver; and upon Mr. Flower's receivership commencing he employed Mr. Bowersock and Mr. Charles W. German, who had been attorney for Mr. Prescott in the Shedd case, to appear for and represent the receiver of the Guardian Trust Company in resistance of the Mecartney suit and Messrs. German and Bowersock argued that appeal, with a good deal of ability and vigor, in the Supreme Court sometime in October of 1917.

Mr. Smith: Now at the time of that argument Judge Gates was disabled, was he not, sick, and George English was in France in the army?

Mr. Rosenberger: Neither Judge Gates nor Mr. English participated in that argument. I know nothing about
730 Judge Gates' sickness, but I do know that George English was either in a training camp or abroad at the time in the service.

Mr. Smith: Now in this connection, I want to offer—going back to the Wollman, Solomon & Cooper items,—I want to offer in evidence—the title of a pleading filed by Wollman, Solomon & Cooper, as attorneys for the Guardian Trust Company, the pleadings being entitled: "Petition of Guardian Trust Company, formerly Missouri, Kansas & Texas Trust Company, Trustee, for compensation for its services as such Trustee for Bondholders of the Kansas City, Shreveport & Gulf Railroad Company, and for Services of its Counsel". This petition being filed in the Pittsburg & Gulf receivership case in Kansas City.

Mr. Rosenberger: What date was it filed?

Mr. Smith: March; March 20, 1900. The amount asked for in that case being—

The Master: In that petition?

Mr. Smith: In that petition, I mean; being $5000.00 to the trustee for its services and $2750.00 for services asked for by Trimble & Braley in the foreclosure of the mortgage of the Kansas City, Shreveport & Gulf Railroad Company. And I want to make a similar offer—

The Master: And nothing for Wollman, Solomon & Cooper?

Mr. Smith: I want to show they were attorneys for the Trust Company in that petition.

The Master: The petition contains no prayer, don't claim any allowance for them?

Mr. Smith: Why, no, not at all, except I want to show they were performing other services.

Mr. Rosenberger: I object to so much of the petition as prayed for an allowance to Trimble & Braley, as not having any tendency to show that that service was rendered for the Guardian Trust Company.

Mr. Smith: Well, I just want to show they were rendering this service for the Guardian Trust Company at this time.

Mr. Rosenberger: I want to renew the objection.

731 The Master: The objection will have to be sustained. I supposed you were going to show allowances to Wollman, Solomon & Cooper.

Mr. Smith: No, not offering it for that purpose. I am offering it for the purpose of showing the Guardian Trust Com-

pany as petitioner employed Wollman, Solomon & Cooper as counsel to file a claim for it, and Trimble & Braley, in this Pittsburg & Gulf foreclosure case at Kansas City.

Mr. Rosenberger: My objection to the offer is, that the offer on its face shows that it has no tendency to prove that the Guardian Trust Company employed Wollman, Solomon & Cooper to render any services for Trimble & Braley as attorneys.

The Master: For Trimble & Braley?

Mr. Rosenberger: Yes, sir.

The Master: No, but doesn't it tend to show they were authorized to render service for the Guardian Trust Company at the same time?

Mr. Rosenberger: I am not objecting to that part of it.

The Master: So far as it is offered to show that Wollman, Solomon & Cooper performed other service for the Guardian Trust Company, I will admit it, if it is contemporaneous in date; is it about the time of this other?

Mr. Smith: March 20, 1900, is when this petition was filed.

Mr. Rosenberger: I don't make the objection that it has no tendency to prove no services rendered by Wollman, Solomon & Cooper during the period of Judge Black's and Wash Adams' receivership, being the period for which fees were allowed them and to which our claim for reimbursement is limited.

The Master: Isn't it about the same period?

Mr. Smith: No; the receivership didn't commence until November of 1900, whereas this petition was filed in March, 1900. Judge Thayer's allowance is specially limited to
732 services rendered to Black and Adams, receivers.

The Master: I don't know, the Master is confused. I don't know how I can pass on the objection.

Mr. Rosenberger: Let me explain my objection, if the Master please: by this account we are seeking reimbursement for on amount allowed by Judge Thayer to Wollman, Solomon & Cooper for services rendered to Judge Black and Wash Adams, receivers; their receivership extending from November 30, 1900, to sometime in October, 1902.

The Master: Yes.

Mr. Rosenberger: Now then, counsel offers some pleading filed on behalf of the Trust Company by Wollman, Solomon & Cooper, in March, 1900, which was some six months prior to the appointment of Judge Black and my objection is that has no tendency to prove that services were rendered by Wollman, Solomon & Cooper to the receivers during the receivership.

Mr. Smith: Well, you must remember there are two items in this case; there is the $3500.00 item and the $1500.00 and I am offering this for what it is worth.

The Master: I know, but both during the same period?

Mr. Smith: No, they are not. I am not able to tell you when they rendered their services. I don't think that is my business.

The Master: The items of the account are confined to the period, as I read it, from November 30, 1900, to October 11, 1902.

Mr. Rosenberger: That is the $3500.00 item.

The Master: Both of them?

Mr. Rosenberger: Yes; to Wollman, Solomon & Cooper for full services rendered in matters last aforesaid.

Mr. Smith: No, it doesn't say that, being settlement with them in full to that date. But read the voucher offered in evidence and you will see it doesn't cover that.

The Master: Well, I know; must have been subsequent and prior.

Mr. Rosenberger: Sure, sure.

733 The Master: The objection will be sustained. I don't think any service rendered prior to November 30, 1900, the period from which services for which this claim is made would be competent, even if they had rendered all sorts of service to the Guardian Trust Company.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Mr. Smith: May it be understood then I am making a similar offer of the contents, without having it set forth, all of this petition—it is not very long, but unnecessary to do it—showing they filed a similar petition for the Guardian Trust

Company for fees as trustee of the Texas, Arkansas & Fort Smith Railroad Company, filed March 20, 1920; the amount of their trustee's fees asked in that case being $5,000.00.?

Mr. Rosenberger: I make the same objection.

The Master: The objection is sustained for the same reasons.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time excepted.

Mr. Smith: Then again the Guardian Trust Company filed a supplemental and additional claim for allowance of attorney fees of McKeighan, Barclay & Watts in that same case.

The Master: What date?

Mr. Smith: March 20, 1900, also.

Mr. Rosenberger: I make the same objection.

Mr. Smith: That is money they claimed they paid out to their attorneys in the Grannis case and Wollman, Solomon & Cooper represented them in that matter.

The Master: Tme objection is sustained for the same reason.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

734 Mr. Smith: Now I think that is all I have, except one thing: I want Mr. Rosenberger to abdicate as a witness and agree with me as counsel that the decree of foreclosure in the Provident cases, the Consolidated decree, was signed by Judge Thayer and Judge Philips. I don't know as is important but I would like to have it in the record, that is all.

The Master: You will agree to that, Mr. Rosenberger?

Mr. Rosenberger: I think it is before the court without stipulation.

The Master: Well, if it be a fact.

Mr. Rosenberger: But if it be not before the court, I am willing to concede that, although I haven't looked at that decree for a long time. I am practically certain that Mr. Smith is right about that.

Thereupon the Guardian Trust Company rested its case.

Thereupon the Kansas City Southern Railway Company and Cambria Steel Company rested their case.

On Friday, April 25, 1924, at 10:30 o'clock A. M., the Master reopened the case at the request of counsel for the Guardian Trust Company and the following proceedings were had:

Mr. Rosenberger: I would like the Master to state in the record that the recital which now appears on page .... of this transcript to the effect that the Southern Company offered in evidence, Exhibit "B", said exhibit being a certain compilation made by Mr. Jetmore, is not true and that said exhibit was not offered in evidence as thus recited and that this recital was interpolated after the hearing before the Master by the reporter at the request of counsel for the Kansas City Southern Railway Company.

Mr. Smith: The document in evidence was identified by Mr. Jetmore while he was on the stand and he testified in reference to it and it was my belief that it had been offered in evidence. If it were not offered in evidence, it was purely through inadvertence and after the the transcript
735 was made up, I asked Miss Parlin to insert it and sent a copy of the letter requesting such insertion to Mr. Rosenberger and to the Master and the Master telephoned me on receipt of the letter that I would be permitted to have it in the record.

Mr. Rosenberger: What I am complaining of is that if it had been offered, I would have made my objections at the time and if it had been received it would have wholly changed the course of my examination of Mr. Jetmore and caused me to obtain additional evidence on the point Mr. Mr. Smith was endeavoring to prove.

The Master: The Master confirms Mr. Rosenberger's statement and also Mr. Smith's and states that the exhibit was put in the record entirely with his consent and approval on the feeling that its not having been formally offered was a mere inadvertence. The Master further permits Mr. Rosenberger to make and include in the record any objections he may please to make now to that exhibit, but does not deem it of sufficient importance to recall Mr. Jetmore for further examination.

Mr. Rosenberger: And does the Master decline to permit me to rebut the showing made by that tabulation, Exhibit "B"?

The Master: Yes, the Master is going to refuse to permit you to do that, not feeling it of enough importance.

To which ruling of the Master, the Guardian Trust Company duly excepted.

The Master: Now make such objections as you please, Mr. Rosenberger.

Mr. Rosenberger: I object to said Exhibit "B" as not being the best evidence, that the vouchers of the Guardian Trust Company in relation to payments made to Mr. Jetmore spoke for themselves and that the attempt of any witness to place his own construction and interpretation of those vouchers upon them is an invasion of the province of the Master, a mere conclusion and utterly incompetent. I
736 move to strike out the tabulation, Exhibit "B", for all of the reasons stated in my objection.

The foregoing objection was, by the Master, overruled, and the said motion to strike denied, to which rulings the Guardian Trust Company duly excepted.

Mr. Rosenberger: I next ask the Master for an opportunity to prove, and offer to prove, that by the orders and decrees of the court in this Cambria case, it was ordered that the stenographer's fees and Master's fees and, in fact, all costs should be advanced during the progress of the case, as follows:

That the Cambria Company should advance one-third; that the Kansas City Southern Railway Company or Kansas City Suburban Belt Railroad Company should advance one-third and that the Guardian Trust Company should advance one-third during the progress of the case; that Mr. Jetmore in doing the work of the reporter took the work upon the understanding that he would furnish the Master's copy for Master Douglass free of charge; and that one copy would be furnished to the Guardian Trust Company and one copy to the Southern Company, or Belt Company; and the other copy to counsel for the Cambria Company and that that course was pursued so long as Mr. Hagerman was actively in the case.

And afterwards when Mr. Hagerman retired from the case all pretense that the Cambria Company was any real party to the suit ended and from that time on the Cambria Company's copy was delivered to the Kansas City Southern Railway Company, so that the Kansas City Southern Company got two copies of the record and the Guardian Trust Company got one copy of the record.

And we offer further to show that Mr. Jetmore's charge and bills throughout were made pursuant to the arrangement on the basis of a charge of fifty cents per page for transcript and that two-thirds of that amount was charged to the Kansas City Southern Railway Company by him and col-
737 lected by him; the other one-third from the Guardian Trust Company and that in that charge of fifty cents per page was absorbed by Mr. Jetmore the cost of making a copy for the Master; and I offer further to show by Mr. Jetmore that when he by his bills referred to the copy for which he collected from the Guardian Trust Company as a carbon copy that that was solely because he was at the time delivering a carbon copy and was not made in the light of the arrangement made for the advancement of these costs as ordered by the court. I offer further to show that pursuant to the order made by the court that costs should be advanced during the progress of the cause, one-third by the Guardian Trust Company, two-thirds by the other party, that in making of allowances to Special Master Douglass one-third of such proposed payments were ordered to be paid by the Guardian Trust Company and two-thirds by the other party and that consistent with this arrangement and in the final decree in the Cambria case, the costs of the litigation were taxed one-third to the Guardian Trust Company and two-thirds to the other parties, the final decree referred to being final decree of 1910, afterwards reversed on appeal.

Mr. Smith: I would like to ask Mr. Rosenberger by whom he intends to make this offer of proof?

Mr. Rosenberger: I offer to prove it, first, by Mr. Jetmore; second, I offer to prove it by the vouchers in possession of the Kansas City Southern Railway Company to which are attached Mr. Jetmore's bills.

Mr. Smith: If there is any question, if your Honor please, or any means of evidence by which Mr. Rosenberger can establish this offer of proof, I think the case ought to be opened and let him do it so far as applies to anything except Mr. Jetmore. So far as concerns Mr. Jetmore, Mr. Jetmore was asked here on the witness stand about the very thing Mr. Rosenberger is talking about and he testified directly contrary to the statements made. Mr. Rosenberger makes an intimation of some sort of stipulation or order of rec-
738 ord as regards these costs to be paid otherwise than as Mr. Jetmore has testified and I demand if there is any evidence of that kind he ought to have produced it and as he has not produced it, that he be given opportunity to produce it right now.

Mr. Rosenberger: Well, by some oversight, these vouchers don't seem to be copies in this transcript; merely because admitted by Mr. Smith that the reporter didn't copy them in the record, I want them copied in the record, being vouchers numbers 957, 2324 and 2726, referred to in Items 1, 2 and 3 of the statement of account being heard by the Master.

The Master: 1, 2 and 3, those are admitted items.

Mr. Rosenberger: They were admitted, but I don't suppose they have slipped out of the record. I want them in the record; I want to show this whole thing.

The Master: All right; those vouchers, the reporter is instructed to put them in.

Voucher No. 957, covering Item No. 1, so admitted in evidence by the Master, is a receipted statement from Shannon C. Douglass to the Guardian Trust Company, dated Sept. 18, 1905, reciting the payment of $2,000.00 as one-third of the provisional allowance made by the United States Circuit Court to Judge Douglass for services as Special Master in the Kansas City Suburban Belt case.

Attached to said voucher are the following letters and documents:

"J. C. Rosenberger
Attorney and Counselor at Law,
Suite 403 N. Y. Life Bldg.,
Kansas City, Missouri.
Telephone Main 2803.

September 18, 1905.

Mr. C. W. Hastings,
Treas. Guardian Trust Co.,
City.

Dear Sir:

To hand yours of the 18th inst., enclosing Trust Company's check and voucher for $2000 to the order of Shannon
739 C. Douglass, Special Master. Your check has been delivered to Judge Douglass and and the voucher duly receipted is herewith returned to you.

Yours very truly,

J. C. ROSENBERGER."

"J. C. Rosenberger,
Attorney and Counselor at Law,
Suite 403 N. Y. Life Bldg.,
Kansas City, Mo.
Telephone Main 2803.

September 18, 1905.

Dear Sir:

I hand you herewith copy of order made by Judge F. Philips, a few days ago, making provvisional allowance to Judge Shannon C. Douglass, Special Master, of $6000, of which $4000 is ordered to be paid by the Kansas City Southern Railway Company, and $2000 by the Guardian Trust Company. Will you please hand me for delivery to Judge Douglass, Trust Company's check for $2000 in accordance with enclosed order. You will probably want a copy of the order to attach to your voucher. After having such copy made, will you kindly return the enclosed order to my files?

Very ruly yours,
J. C. ROSENBERGER."

"In the Circuit Court of the United States for the Western Division of the Western District of Missouri, at Kansas City.

Cambria Steel Company, Complainant,
No. 2468 vs. In Equity
The Kansas City Suburban Belt Railroad Company, Union Terminal Railroad Company, Kansas City and Independence Air Line, Guardian Trust Company, Missouri Elevator and Terminal Company, Central Improvement Company, Second Street Improvement Company, Fairmount Amusement Company and Northern Townsite Company, Defendants.

Bill

Stuart R. Knott and Edward F. Swinney, as Receivers of the Kansas City Suburban Belt Railroad Company, and Kansas City Suburban Belt Railroad Company, Complainants,

vs.

Cambria Steel Company, Guardian Trust Company, and Francis M. Black, its Receiver, Missouri Elevator &
740 Terminal Company and Wash Adams, its Receiver, Central Improvement Company, and Wash Adams, its Receiver, Second Street Improvement Company and Fairmount Amusement Company, Defendants.

Ancillary Bill

Order Granting Provisional Allowance To Shannon C. Douglass, Special Master.

It is hereby ordered by the court, with the consent of the Defendants in the Original Bill and of the Complainants and Defendants in the Ancillary Bill in the above entitled causes, that there be paid at this time to Shannon C. Douglass, Special Master, as a provisional allowance on account of his services as such Master in said causes, the sum of Six Thousand Dollars,—of which, the Receivers of the Kansas City Suburban Belt Railroad Company and the Kansas City Southern Railway Company shall pay the sum of Four Thousand Dollars, and the Guardian Trust Company shall pay the sum of Two Thousand Dollars.

The said division or distribution of this provisional allowance between said parties, is also provisional,—the court reserving the question of how said allowance in favor of said Master, as well as all other items of costs and expenses herein, shall be taxed and charged against said parties until the final determination of said causes; and should then the Court tax and charge the whole or any part of the amount of this allowance paid by one party against the other, the latter shall in such case refund the same to the former.

Dated Kansas City, Mo. ....., 1905.

(Signed) JNO. F. PHILIPS,
Judge.

We consent to the above order:

(Signed) S. W. MOORE and
T. R. MARKS,
Solicitors for Kansas City, Southern Railway Company and Receivers Kansas City Suburban Belt Railroad Company.

(Signed) H. S. MECARTNEY,
J. C. ROSENBERGER,
Solicitors for Guardian Trust Company."

741 Voucher No. 2324, covering Item No. 2, so received in evidence by the Master is a receipted statement from Shannon C. Douglass to the Guardian Trust Company,

dated May 1, 1908, reciting the payment of $1500.00 for provisional allowance of Master's fees in Cambria Steel Company vs. Kansas City Suburban Belt Company, as per order of May 1, 1908, thereto attached. Attached to said voucher is the following order:

"In the United States Circuit Court for the Western Division of the Western District of Missouri.

Cambria Steel Company, Complainant,
No. 2468 vs. In Equity.
The Kansas City Suburban Belt Railroad Company, et al., Defendants.

Bill.

Stuart R. Knott, et al., Receiver, Complainant,
vs.
Cambria Steel Company, et al., Defendants.

Ancillary Bill.

Order Granting Provisional Allowance to Shannon C. Douglass, Special Master.

It is hereby ordered by the Court, with the consent of the Defendants in the Original Bill, and of the Complainants and Defendants in the Ancillary Bill in the above entitled cause, that there shall be paid at this time to Shannon C. Douglass, Special Master, as a Provisional Allowance on account of his serivces as such Master in said causes, the sum of Four Thousand ($4000) Dollars, of which the Receiver of the Kansas City Suburban Belt Railroad Company and the Kansas City Southern Railway Company shall pay the sum of Two Thousand Five Hundred ($2,500) Dollars, and the Guardian Trust Company shall pay the sum of One Thousand Five Hundred ($1,500) Dollars.

The said division or distribution of this Provisional Allowance by the said parties is also provisional—the Court reserving the question of how said Allowance in favor of said Master, as well as other items of cost and expenses herein, shall be taxed and charged against said parties, until the final determination of said causes; and should then the Court tax and charge the whole or any part of the amount of
742 this Allowance paid by one party against the other party, then the latter shall in such case refund the same to the other.

(Signed) JNO. F. PHILIPS, Judge.

We consent to the above order:

S. W. MOORE,
for the Kansas City Southern R. Co. Receiver K. C. Suburban Belt Ry. Co. K. C. Suburban Belt R. Co.

EDWARD P. GATES
JOHN A. SEA and
GEO. H. ENGLISH, JR.,
for Guardian Trust Company.

Approved:
Edward C. Wright.

United States of America,—Set.

I, Adelaide Utter, Clerk of the Circuit Court of the United States for the Western Division of the Western District of Missouri, do hereby certify that the foregoing is a true copy of the order granting provisional allowance to Shannon C. Douglass, Special Master in the cause therein named, as fully as the same appears in my office.

Witness my hand as Clerk, and the seal of said Court. Done at office in Kansas City, Missouri, this 1st day of May, A. D. 1908.

(Seal) ADELAIDE UTTER, Clerk."

Said voucher No. 2726 so received in evidence by the Master, covering Item No. 3, is a receipted statement from A. J. Martin, U. S. Marshal, to the Guardian Trust Company, dated December 29, 1910, reciting the payment of $5053.50 for proportion of fees of Shannon C. Douglass in Cambria Steel Company vs. Guardian Trust Company. Attached to said voucher is the following letter:

"Kansas City, Mo. December 29, 1910.

To Guardian Trust Company,
J. F. Downing, President,
John A. Prescott, Vice-
President and Liquidating Agent.

Gentlemen:

Having been directed by Hon. S. C. Douglass, the beneficiary under the Fee bill issued by the Clerk of the United States Circuit Court in and for the 'Western Division of the Western District of Missouri in a cause entitled "Cambria

Company vs. Guardian Trust Company, et al.' dated
743 November 18th, 1910 to levy said fee bill as provided therein upon the goods and chattels, moneys and effects of said Guardian Trust Company, more than thirty (30) days since the demand of payments of same having elapsed, I hereby notify you that unless the amount of $5000.00 with costs be paid before three o'clock on this day to me I shall as directed by said fee bill levy the same upon your goods and chattels, moneys and effects.

A. J. MARTIN,
United States Marshal.
By K. C. Miller, Deputy.

In response to your request and upon payment by you of the amount named in the Fee Bill above referred to, I note at your request that such payment is paid by you under protest and over your objections and with express statement by the Guardian Trust Company that said payment is under protest and involuntary and said payment is to be deemed to be made to me without waiving any rights, which said Guardian Trust Company is entitled to in the premises and is made pursuant to the levy about to be made by me upon the goods and chattels, moneys and effects of the Guardian Trust Company.

A. J. MARTIN,
United States Marshal in and for the Western District of Missouri.
By H. C. Miller, Deputy."

Mr. Rosenberger: I next offer Paragraph 12 of the final decree entered in June, 1910, in the Cambria Steel Company litigation, reading as follows:

"XII. It is further ordered, adjudged and decreed that the costs of this action be paid as follows: one-third thereof shall be paid by the Guardian Trust Company and two-thirds thereof shall be paid by the Kansas City Suburban Belt Railroad Company and its receiver and the Kansas City Southern Railway Company."

I now call upon the Kansas City Southern Railway Company to produce its vouchers showing all payments
744 made to H. A. Jetmore acting as reporter for Special Master Douglass in the Cambria case. The vouchers, if produced, will show as between the Guardian Trust Com-

pany and the Court and other parties to the case as to why advancements for costs were apportioned the way they were.

The Master: Mr. Smith having indicated a willingness to produce those vouchers, they will be produced.

Mr. Rosenberger: I also ask the privilege of calling Mr. Jetmore for further cross-examination in view of the reception by the Master of this document which was not offered when he was on the witness stand but shown to be offered now.

The Master: Well, the Master in view of the full examination of Mr. Jetmore, and the Master not deeming it of any great importance to the information of the court to recall Mr. Jetmore, declines to permit his being recalled for examination after the case has been completed. The Master feels Mr. Jetmore has told all he knows about it.

To which ruling of the Master in declining to permit the recalling of Mr. Jetmore for further examination, the Guardian Trust Company duly excepted.

Mr. Rosenberger: I would like the Master to state in the record that the rectial heretofore appearing in this record on page ..... to the effect that the Kansas City Southern Railway Company's Exhibits "D" and "E" as offered in evidence was not correct but was interpolated after the hearings by the reporter and that no such offer was made while the witness Ford was on the stand. I make the same request as reference to the Jetmore item.

Mr. Smith: I want to say with reference to these exhibits that they were identified and I was acting under the assumption that they had been formally offered. If they were not formally offered, the failure was due to inadvertence and I would like to have them in the record and I asked Miss Parlin to put them in, including them in the letter of which a copy was sent to Mr. Rosenberger and to the Master.

745 The Master: The Master notwithstanding the omission of the formal offer rules that Exhibits "D" and "E" shall be considered in evidence and made part of the transcript, although not previously formally offered in evidence by inadvertence.

Mr. Rosenberger: I object to the Ford exhibits being used for the reason that they were compiled by a witness

who, on his own testimony, is not qualified to compile them or to testify concerning them or to give his conclusions and his whole testimony is the testimony of an office boy giving his conclusions as to what is in the record. He was perfectly incompetent to testify as to the number of sessions before the Master and as to what was done at these sessions, not being trained as a lawyer. Furthermore, said exhibits are not the best evidence, the records being before the Master. I move to strike out Exhibits "D" and "E" for the reasons stated in the objections.

746 Mr. Smith: His testimony shows he was voucher clerk in the office of the law department. I will say in addition to that, he is one of the smartest boys working for the Kansas City Southern Railway Company.

Mr. Rosenberger: Bright boy for his years.

Mr. Smith: Well, he is twenty-two, twenty-three years old.

Mr. Rosenberger: His qualifications show he is not competent.

Mr. Smith: I am willing to stand on his testimony as to what his qualifications showed.

The foregoing objections were, by the Master, overruled, and the motion to strike denied, to which rulings the Guardian Trust Company duly excepted.

Mr. Rosenberger: I now desire to offer some items of evidence which, by inadvertence, I omitted to offer at the time of the hearing. In respect to Item No. 134, a fee of $15,000.00 paid to Fred W. Lehmann, I offer certified copy of petition and order made by the court in the case of Shedd vs. Guardian Trust Company in the District Court of the United States for the Western Division of the Western District of Missouri, authorizing the payment of that $15,000.00 by Henry C. Flower, Receiver.

Mr. Smith: I object to that offer for the reason that neither the Southern Company nor the Cambria Company were parties to that proceeding and any order in that case is not binding upon them, and I object to it for the various reasons that are stated to evidence of that kind as contained in our previous objections. I object to it also for the reasons contained in our written objections and that this peti-
747 tion is purely hearsay evidence so far as the Southern and Cambria Companies are concerned.

The foregoing objections were, by the Master, overruled, to which ruling, the Kansas City Southern Railway Company and the Cambria Steel Company duly excepted.

Said certified copy of petition and order was thereupon received in evidence by the Master, and is in words and figures as follows:

Petition of F. W. Lehmann for Allowance of Compensation for Legal Services Rendered The Guardian Trust Company.

"In the District Court of the United States in and for the Western District of Missouri.

Edward A. Shedd and Charles B. Shedd, Complainants,
No. 110. vs. In Equity.
Guardian Trust Company, et al., Defendants.

The Petitioner states that he is a citizen and resident of the State of Missouri and is, and for more than forty years has been engaged, in the profession of law and for twenty-seven years of that time in the State of Missouri.

That on or about the 8th day of November, 1914, he was retained by the Guardian Trust Company of Kansas City, Missouri, to represent it in the Supreme Court of the United States in the case of the Kansas City Southern Railway Company vs. the said Guardian Trust Company and others, pending in said Court, on appeal and on writ of certiorari.

That petitioner was retained by said Trust Company as leading counsel in said case and to take responsible charge of the same in said Court.

That said case was one of the greatest importance to the said Trust Company involving a judgment in favor of said Trust Company rendered on June 25th, 1910, for $639,658.56 and the interest on said sum from the date of said judgment, making an amount at the time of the final affirmance of said judgment on February 21st, 1916, of approximately $860,000.00.

748 That the record in said cause was a voluminous one consisting of more than a thousand printed pages.

That important and difficult questions of law were involved, the legal issues presenting questions of both formal and substantive law, as an examination of said record will show.

That the brief, statement and argument in the case, presented on behalf of the Trust Company in said Court was pre-

pared as to most of the questions by petitioner, and involved several months of diligent and painstaking labor by the petitioner in the study of the record, the examination of authorities and the preparation of the brief and argument and preparation for the presentation of the case at the bar of the Court.

That petitioner attended at the hearing of said case by the Supreme Court and made an argument therein on behalf of the Trust Company.

That the work so done was work necessary to be done by petitioner in the discharge of his obligations under his retainer by the said Trust Company, although other counsel appeared in the case with him on behalf of the Trust Company and on behalf of some of its stockholders.

That the questions involved in the case were of the highest importance and numerous briefs were filed by counsel for other parties as amici curiae, such briefs being adverse to the contentions made on behalf of the said Trust Company.

That the determination of said case although not by unanimous judgment of the court was in every respect favorable to the said Trust Company, and the judgment in its favor with interest as provided therein has been paid in full.

That there was no agreement between the petitioner and the said Trust Company as to the amount of his compensation, save that he was to be paid the reasonable value of the services rendered by him.

That he was paid on account when retained the sum of one thousand dollars and has received no other compensation for his services.

749 He respectfully asks an allowance of fifteen thousand dollars additional as reasonable compensation for the services rendered by him.

F. W. LEHMANN

State of Missouri,
City of St. Louis—ss.

F. W. Lehmann being first duly sworn, deposes and says that he has read the foregoing petition and knows the contents thereof and the same is true as he verily believes.

F. W. LEHMANN

Sworn to before me and subscribed in my presence this 21st day of November, 1917.

My commission expires .....

....., Notary Public."

"In the District Court of the United States in and for the Western District of Missouri.

Edward A. Shedd and Charles B. Shedd, Complainants,
No. 110. vs. In Equity.
Guardian Trust Company, et al., Defendants.

Order.

Now this 24th day of November, 1917, this cause coming on to be heard upon the petition of F. W. Lehmann for allowance of compensation for legal services to the Guardian Trust Company, filed on November 22, 1917, the complainants appearing by J. C. Rosenberger, their attorney, the defendants by Charles W. German, their attorney, and making no objection thereto, and the Receiver, appearing by Justin D. Bowersock, his attorney, and due notice of the hearing on said petition having been given to the parties to the cause in accordance with the order appointing the Receiver herein dated August 29, 1916, it is now by the court ordered and adjudged that said F. W. Lehmann be allowed the sum of $15,000.00 in addition to what he has already received as compensation for all services heretofore rendered by him to
750 the Guardian Trust Company, and it is further ordered that the Receiver be and is hereby directed to make payment of such allowance out of the funds in his hands belonging to said Trust Company.

ARBA S. VAN VALKENBURGH, Judge.

United States of America—Sct.

I, Edwin R. Durham, Clerk of the District Court of the United States for the Western District of Missouri, do hereby certify that the foregoing is a true copy of the Petition and Order of Allowance of Compensation in the cause therein named, as fully as the same appears in my office.

Witness my hand as clerk, and the seal of said Court. Done at office in Kansas City, Missouri, this 26th day of April, A. D. 1924.

EDWIN R. DURHAM, Clerk,
By E. O'Keefe, Deputy Clerk."

On Monday, May 5, 1924, at ten o'clock A. M. hearings were again resumed before the Master, and the following proceedings were had:

Mr. Rosenberger: In respect to Item No. 127, in relation to fees paid Trimble & Braley, we offer in evidence from the printed volume on file in the Supreme Court of Missouri, entitled: "Abstract of the Record"; entitled

"In the Supreme Court of Missouri, October Term, 1911.

J. McD. Trimble and C. A. Braley, Appellees,
vs.
Guardian Trust Company, Appellant.

Appeal from the Circuit Court at Kansas City, Appellant's Abstract of the Record, all of pages 1 to 31, inclusive, down to the words "second amended answer" appearing on page 31. The reporter, however, being directed to omit copying the petition of Trimble & Braley, the same having already been copied in the record before the Master here and the reporter to use the formula that said petition has already been offered. Again, beginning at page 76, under caption
751 showing proceedings for appointment of Referee and continuing to the end of the Referee's report, page 116. That is all there is from the abstract.

Mr. Smith: We object to this offer of so much of the abstract (pages 135 to 165, or Harkness & Histed's bound volume of brief 51), for the reasons hereinbefore stated in our written objections to it; and, for the additional reason, that the petition in this case has already been offered in evidence over our objections and there isn't anything else in this matter that I can see has any bearing on this case, it merely being a recital that the petition had been filed; and, therefore, I cannot see any point in making the offer.

I want to say in addition that, of course, this objection we make includes the objection that the Kansas City Southern Railway Company and Cambria Steel Company were not parties to this suit and the judgment is neither binding on us nor competent evidence against us; nor is any part of the record binding or competent against us; I also make the further objection that this is an unnecessary encumbering of the record. And I object to the offer of pages 76 to 116, inclusive, being pages 210 to 250 of said Harkness & Histed's volume 51, for the same reasons.

The Master: The objections are overruled.

To which last action and ruling of the Master in overruling the foregoing objections to the introduction of said pages of the record in the Trimble & Braley case, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted, and still except.

Said pages 1 to 31, inclusive, of the Appellant's Abstract of the Record in the Trimble & Braley suit, are in words and figures, as following, to-wit:

752 "In The
Supreme Court of Missouri

October Term, 1911

J. McD. Trimble and C. A. Braley, Appellees
vs.
Guardian Trust Company, Appellant.

Appeal from the Circuit at Kansas City.

Abstract.

On the 30th day of August, 1905, the plaintiffs filed in the Circuit Court of Jackson County, Missouri, a petition in words and figures as follows, to-wit:

(This petition already offered in evidence).

Pages 76 to 116 of said record in said Trimble & Braley suit, are in words and figures, as follows, to-wit:

"Proceedings for Appointment of Referee.

Thereafter on October 3, 1905, being the 5th day of the October, 1905, term of said Circuit Court, the following proceedings were had as appear of record:

'Now come the plaintiffs and file application to refer this cause to a referee'.

On October 14, 1905, being the 6th day of the October, 1905, term of said court, the following proceedings were had of record in said cause as appears from the record, to-wit:

'Now, on this day by agreement of parties, it is by the court ordered that this cause be and it is hereby referred to R. E. Ball to report on the law and facts, said report to be filed on or before the 3rd day of the January term, 1906'.

On January 8, 1906, being the first day of the January, 1906, term of said court, the following proceedings were had as appears from the record, to-wit:

'It being made to appear to the court in the above entitled cause that the time fixed by the previous order of this court in which R. E. Ball as referee was required to file his report in said cause, was too short. Now, therefore, by agree-
753 ment of parties it is ordered that the said R. E. Ball file his report as referee in said cause on or before the 3rd day of the April term, 1906. Defendant is given until on or before January 8th, to file an amended answer and plaintiffs have ten days after the filing of said answer to plead thereto.'

On January 19th, 1906, being the 11th day of the January, 1906, term of said court, the following proceedings were had and entered of record:

'The defendant files amended answer and plaintiffs file reply to amended answer.'

On April 11, 1906, being the 3rd day of the April, 1906, term of said Circuit Court, the following proceedings were had as appears from the record, to-wit:

'Now on this day for good cause shown to the court, the time for filing report of referee is ordered to be and is hereby extended 30 days.'

On May 11, 1906, being the 28th day of the May, 1906, term of said court the following proceedings were had:

'Now on this day by leave of court, defendant files second amended answer herein.'

On May 24, 1906, being the 39th day of May, 1906, term, the following proceedings were had as appears from the record:

'Plaintiffs file reply to defendant's second amended answer.'

On October 6, 1906, being the 76th day of the October, 1906 term of said court, the following proceedings were had as appears of record:

'The plaintiffs herein appearing by their attorney, John A. Eaton, and by themselves, and the defendant appearing by Harkless, Crysler & Histed, and consenting thereto, it is hereby ordered that inasmuch as the time for Judge R. E. Ball, to file his report as referee in the above cause has expired, it is ordered that he be and he is hereby re-appointed and the time for him to file his report is now extended until the first day of the January, 1907 term, and that such report

shall have the same force and effect when filed as if no time had been heretofore fixed for the said referee to file his
754 report.'

There also appears of record the following:

'We hereby consent to the above and foregoing order.

JOHN A. EATON
TRIMBLE & BRALEY
Attorneys for Plaintiffs.

HARKLESS, CRYSLER
& HISTED,
Attorneys for Defendant.

On January 16, 1907, being the 3rd day of the January, 1907 term of said court, the following proceedings were had as appear of record:

'At this day, court orders that referee heretofore appointed is now allowed until the 3rd day of the April, 1907 term, of this court to file his report herein'.

On May 18, 1907, being the 34th day of the April, 1907 term of said court, the following proceedings were had and entered of record:

'At this day, it was ordered by the court that the referee herein be allowed 60 days in which to file report. This order to be as of April 10th, 1907.'

On June 10th, 1907, being the 54th day of the April, 1907 term of said court, the following proceedings were had and entered of record:

'At this day the referee herein is by the court allowed until August 1, 1907, in which to file his report.'

On August 1, 1907, being the 90th day of the April term, 1907, of said court, the following proceedings were entered of record:

'At this day R. E. Ball, referee herein, is by the court allowed 10 days in which to file his report.'

On August 10, 1907, being the 94th day of the April, 1907 term of said court, the following proceedings were had of record:

'At this day, R. E. Ball, Esq., referee herein, files his report.'

The report of the Referee is hereinafter set forth in full in the bill of exceptions, which report is here now adopted in all respects as if set forth in the record at this point, which report recites that it is accompanied by all the evi-
755 dence taken in the case, which evidence is hereinafter set forth in the bill of exceptions, and the report so hereinafter set forth is here adopted in all particulars as if set forth in full at this point.

On August 13, 1907, being the 95th day of the April, 1907 term of said court, the following proceedings were had of record:

'At this day, plaintiffs and defendant each file exceptions to the report of the referee herein,' which exceptions are hereinafter set forth in the bill of exceptions, and adopted as if set out in full at this point.

Trial and Judgment.

On September 26th, 1907, being the 84th day of the April 1907 term of said court, the following proceedings were had:

'Now this cause coming on to be heard, come the parties by their respective attorneys, and by agreement same is continued until Wednesday, October 2, 1907, at 9:30 A. M.'

On October....., 1907, being the 88th day of the April 1907 term of said court, the following proceedings were had of record:

'Now come the parties by their respective attorneys and by leave of the court, defendant files herein declarations of law and defendant's motion to set aside the finding and report of the referee herein is taken up and after hearing a portion of the argument of counsel further hearing of the same is continued until tomorrow morning at 9:30 A. M.'

On October, 1907, being the 88th day of the April, 1907 term of said Circuit Court, the following proceedings were had of record:

'Now again come the parties by their respective attorneys and after hearing the remainder of the argument of counsel, the court takes this matter under advisement.'

Judgment.

On March 28, 1908, being the 66th day of the January term 1908, of said Circuit Court, the following proceedings
756 were had appearing of record:

'Now on this day come the plaintiffs by John A. Eaton, their attorney and the defendant by its attorneys, Harkless,

Crysler & Histed, and Henry S. Mecartney, and this cause came on for further hearing and decision, the same having been heretofore orally argued and submitted to the court upon the exceptions to the report of R. E. Ball, referee herein, and upon the application and motion of the defendant for leave to file the 3rd amended answer herein and the court having heard the argument and read and considered the evidence, doth here now find, consider and adjudge upon all the questions and issues presented in this cause as follows:

'That the application and motion of the defendant for leave to file 3rd amended answer herein made and filed after the hearing and report of the referee and after the hearing in this court upon exceptions to said report, be and the same is denied and overruled, to which ruling and decision of the court, the defendants except.

It is further considered and adjudged by the court that the referee's report herein filed be and the same is herein in all respects approved and confirmed, and that all exceptions thereto filed therein be and the same are overruled and denied.

It is thereupon further considered and adjudged by the court that the plaintiffs, J. McD. Trimble and C. A. Braley, partners, under the firm name and style of Trimble & Braley, have and recover of and from the defendants the Guardian Trust Company, the sum and amount so found and determined in the report of the referee aforesaid, being the sum of $16,265.75, together with interest thereon from August 30, 1905, at the rate of six per cent per annum, being the total sum of principal and interest to this date of $18,780.52, and that the defendant pay the costs herein taxed.

757 It is further considered and adjudged that upon the report of the referee, R. E. Ball, and his application herein for allowance for services as referee in this case, there be and is hereby allowed the sum of $750, to be paid to R. E. Ball in full for his services as referee herein and that said sum be paid by the defendant and taxed as costs herein. For which judgment and costs aforesaid, let execution issue.

To which judgment and decision of the court, the defendants excepted.'

On April 1, 1908, being the 69th day of the January, 1908 term of said court, and within four days after judgment, the following proceedings were had of record:

'Now, defendant files motion for a new trial and rehearing of this cause.'

The motion for a new trial is hereinafter set forth in the bill of exceptions and is here now adopted as correct copy of motion for new trial as if set forth in full at this point.

On April 13, 1908, being the first day of the April, 1908 term of said court, the following proceedings were entered of record.

'Now the defendant's motion for new trial of the cause is by the court overruled, to which ruling of the court, the defendant excepts.'

Appeal.

On April 14, 1908, being the second day of the April, 1908 term of said court, the following proceedings were had:

'Now the defendant makes application and files affidavit for an appeal from the judgment of this court, which application is by the court sustained and appeal allowed to the Supreme Court of the State of Missouri as prayed, and court fixed defendant's appeal bond in the sum of $40,000.00.

758 Thereupon defendant files its appeal bond herein in the penal sum of $40,000 with Commerce Trust Company as security thereon which said bond is by the court approved.

Now defendant is by the court given until on or before the 3rd day of October term, 1908, of this court in which to file its bill of exceptions herein.'

The affidavit in appeal is in words and figures as follows:

'In the Circuit Court of Jackson County, Missouri, at Kansas City, April Term, 1908, J. McD. Trimble and Charles A. Braley, doing business under the firm and style name of Trimble & Braley, Plaintiffs, vs. Guardian Trust Company, Defendants, Number 25346.

State of Missouri,
County of Jackson—ss.

Affidavit for Appeal.

John A. Prescott, being duly sworn upon his oath, states that he is the secretary of the defendant, Guardian Trust Company, and as such is familiar with its affairs and with the subject of this affidavit, and that he makes the same for and on behalf of the Guardian Trust Company and in its

interest, and states that the appeal herein is not made for vexation or delay, but because the affiant believes and the defendant, Guardian Trust Company, believes that it, the appellant, is aggreived by the judgment and decision of the court and referee herein.

JOHN A. PRESCOTT.

Subscribed and sworn to before me, on this 11th day of April, 1909.

My commission expires Sept. 28th, 1908.

(Seal JOHN E. McPHERSON,
Notary Public, Jackson County, Missouri.'

On October 12, 1908, being the first day of the October 1908 term of said court, the following was entered of record:

'Now for good cause shown, it is by the court ordered that the time heretofore given defendant in which to file its bill of exceptions herein be and the same is hereby extended until or or before the 3rd day of January, 1909, term of said court."

759 On January 9, 1908, being the 66th day of October 1908 term of the said court, the following proceedings were entered of record:

'Now on this 9th day of January, 1909, comes the above named defendant and tenders its bill of exceptions which is now approved and signed by the Judge and is by the court ordered to be and the same is hereby filed and made a part of the record in this cause.'

On May 25, 1908, the appellant filed in this court a certified copy of the judgment and order granting an appeal under the short method provision of the statute and the same is now on file in this court.

J. McD. Trimble and C. A. Braley, Partners under the firm name and syle of Trimble & Braley, Plaintiffs, vs. Guardian Trust Company, Defendant, No. 25436.

Bill of Exceptions.

Be it remembered that this cause coming on for hearing at the April Term, 1907, of the Circuit Court of Jackson County, Missouri, at Kansas City, Missouri, and before the Honorable Jas. H. Slover, Judge of said division of said court, on Thursday, the 26th day of September, 1907, the hearing of said cause was by agreement of counsel postponed and continued until the 2nd day of October, 1907.

On Wednesday, October 2, 1907, this cause came on for hearing on the report of the referee filed herein on August 10, 1907, and the exceptions to said report filed herein by the defendant on the 13th day of August, 1907, and on the application and motion of the defendant for leave to file the third amended answer herein. The plaintiffs to sustain the issues on their part offered and introduced evidence as follows:

Plaintiff's counsel offered and introduced in evidence the report of the referee Hon. R. E. Ball, filed herein on the 10th of August, 1907, together with transcript of the evidence taken before said referee and the exhibits filed therewith. The said referee's report and the said transcript of evidence and exhibits filed therewith are in words and figures
760 as follows, to-wit:

Report of R. E. Ball Referee.

Whereas the court did in the above entitled cause on the fourteenth day of October, 1905, make and cause to be entered for record the following order of references to-wit:

'Now on this day by agreement of parties, it is by the court ordered that this cause be and it is hereby referred to R. E. Ball to report on the law and facts, said report to be filed on or before the third day of January term, 1906.'

Which said order was thereafter by the court renewed and the time within which the referee was directed to report was extended until on or before August 10th, 1907.

Now, therefore, I have the honor to report to the court that pursuant to said order of reference and the renewals thereof, and in accordance with the statutes of the state, I did, before proceeding to hear any testimony in the cause, take and subscribe an oath before an officer duly authorized to administer the same, faithfully and fully to hear and examine the cause and to make a just, impartial and true report according to the best of my understanding, which said oath is herewith returned; that on Thursday, February 1st, 1906, at the office of Trimble and Braley, No. 720 Bryant Building, Southwest Corner of Eleventh Street and Grand Avenue, in Kansas City, Missouri, after due notice and by agreement of both parties, I began the hearing of said cause, both parties being represented by their respective counsel, and I herewith return and make a part of this report, a full and complete transcript of all the evidence, including documents and exhibits introduced in evidence, together with the various rul-

ings made by me and a record of the exceptions of the parties taken thereto.

All of the several adjournments of said hearings were had by agreement of the parties and were made and the hearing continued as shown by the transcript of the proceedings aforesaid.

761 After the evidence had all been taken, the cause was argued by the respective counsel and briefs with requests for findings of fact and conclusions of law were presented to me, all of which are returned with this report, together with my rulings on the same, it being understood that each party excepted duly at the same time to all adverse rulings.

Statement of Referee.

It may conduce to a fair and just determination of the issues and aid the court in passing upon this report to briefly and without going into detail, state what the issues are.

Plaintiffs have filed suit on an account for legal services alleged to have been rendered to the defendant at divers times between November 2nd, 1898, and the 16th day of January, 1905, and the items of that account, after allowing the credits conceded in the petition, amount to $20,533.25 for which the plaintiff prays judgment with interest on the unpaid balance claimed.

The defendant, by its second amended answer, joins issue, by general and special denial, and does this in thirty-two printed pages with twenty counts. All of these counts down to and including number fifteen (15) are defensive and contain the assertion of matter claimed by defendant to be a defense against the allowance of the various items against which they are directed.

Counts sixteen (16) to twenty (20), both inclusive, are counterclaims by the defendant against the plaintiffs, in and by which the defendant asks judgment against the plaintiffs as follows:

Count sixteen (16); for $100,000.00, being in the matter of a bill in equity filed in the United States Circuit Court in the Western Division of the Western District of Missouri, for the appointment of a receiver of the defendant, and in which count of the answer the damage alleged is claimed to have resulted to defendant by reason of the want of skill and care on plaintiff's part as defendant's attorneys.

762 Count seventeen (17); for $100,000.00 being in the matter of a bill in equity of the Cambria Steel Company, for an accounting between defendant and the receivers of the Kansas City, Suburban Belt Railway Company, filed in the United States Circuit Court at Kansas City, in which said counter claim it is alleged that by reason of lack of care, skill and vigilance on the part of the plaintiffs, as defendant's counsel, defendant was damaged in the amount named.

Count eighteen (18); for $6000.00, being the amount of a payment for services to attorney Wash Adams, made by defendant but alleged by defendant to be properly chargeable to and recoverable from the plaintiffs, on the ground that such service was part of the services for which plaintiffs were paid an annual salary and that Mr. Adams had in fact been employed by plaintiffs for their own assistance and on their own account in the performance of the duties required of them under the terms of their annual contract.

Count nineteen (19); for $942.37, expenses claimed to have been advanced, and $25,000.00 one half the amount claimed to have been received by the plaintiffs, it being claimed that these amounts are due defendant under a contract with plaintiffs for the collection of certain debts against parties named in said count.

Count twenty (20); for $42.50, being pro rata amount claimed as an expense of attorneys fees paid by defendant and asserted to be so paid for plaintiff's use and benefit.

The plaintiffs reply is a general denial.

On the issues made by the petition, answer and reply, I find as follows:

First: That the plaintiffs as attorneys and counselors for defendant, paid out moneys and performed services for the defendant at its special instance and request, and in the amounts and at the times stated below; that the several sums stated and charged as having been paid out were so paid; that the sums stated and charged for legal services
763 to the defendant were and are the reasonable value of the services rendered by the plaintiff; and that plaintiffs have not been paid or compensated in any way therefor except as stated in the next paragraph of this report.

1908 Nov.	2	To expenses of J. McD. Trimble to Chicago	$ 20.00
Dec.	17	To cash for copy of deed of trust K. C. S. & G. Terminal Co. to M. K. & T. Trust Co.	8.00
1909 Mch.	1	To cash for telegram to J. McD. Trimble from Nathaniel Norton, in re claim against Lay	.98
April	20	To cash for 2 telegrams Norton to C. A. Braley and vice versa in re Lay matter	1.06
Apr.	29	To cash for telegram J. McD. Trimble to W. S. Taylor	.65
May	26	To cash for Mr. Braley's expenses to examine Wentworth mine	5.12
Apr.	1	To advice, time and services other than legal in connection sales of rice and irrigation stock including trip to Chicago to see Oliver Snow, Mansfield, Shedd, Baker, Harris	100.00
July	12	To cash for three telegrams in re purchase Cuban iron properties	2.22
July	19	To cash for seven telegrams in re holding directors meeting of Company in Chicago and change of its name and capital	2.85
July	27	To cash for nine telegrams account Guardian Trust Company in re electric automobile business with Lobdell of Chicago, the collection of claim against Lay and Chicago zinc mining property	5.31
April May, June and July, 1909.		To all advice and services in the matter of suit of Missouri, Kansas & Texas Trust Co., as Trustee of Texas & Ft. Smith Ry. Co. in U. S. Circuit Court for Eastern District of Texas, being a suit to foreclose mortgage on railroad property and secure appointment of a receiver pending the foreclosure proceedings. The services rendered include the preparation of the bills of complaint, the institution of the suit, the securing of appointment and qualification of R. A. Greer as receiver, securing the property to him, the preparation and filing of an ancillary bill in U. S. Circuit Court for Western District of Arkansas, and securing ancillary orders for appointment of the same receiver, the subsequent negotiations resulting in the dismissal of the suit, the discharge of said receiver and settlement of his affairs and costs of suit	2500.00
764			
April, May, June and July, 1909.		To all advice and services in suit of M. K. & T. Trust Company against K. C. Shreveport & Gulf Ry. Co. in Circuit Court of Caddo Parish, at Shreveport, La., being a suit to foreclose a mortgage on the railroad property and secure appointment of the receivers pending the foreclosure proceedings.	

The services charged for include the preparation of the bill of complaint, the institution of the suit, the appointment and qualification of Trimble, Martin, Gillham, Youree and Furnum as receivers, subsequent negotiations which resulted in the dismissal of the suit, discharge of said receivers and the settlement of their affairs and costs of suit $2000.00

(The Kansas City, Shreveport & Gulf Ry. Co. owned all of the lines operated by the K. C. Pittsburg & Gulf Rld. Co. in the State of Louisiana, under a contract or lease from that company. After the appointment of receivers for the Kansas City, Pittsburg & Gulf Rld. Co. it was found necessary to institute suit for appointment of receivers for the K. C. Shreveport & Gulf Rld. Co. interest upon the bonds of which was in default.

Thereupon a bill was prepared and filed in said court and application thereon was made for the appointment of receivers, and the court appointed J. McD. Trimble, E. L. Martin, Robert Gillham, H. L. Youree and Richard Furnum, Receivers, who qualified as such and after the appointment of Fordyce and Withers as receivers of all the property of the defendant companies in the suit of the State Trust Company against the Kansas City, Pittsburg & Gulf Rld. Co. et al., the said suit was dismissed.

For all services rendered in the above entitled suit, and for all services rendered in connection with the appointment of receivers and the conduct of said receivership and the final disposal of said suit, the above charge is made).

Aug. 22	To cash for 2 telegrams in re payment taxes on Surinam property	2.62
Sept. 12	To cash for 2 telegrams between Mr. Stillwell and Judge Trimble about C & Ft. S. & C. K. C. & E. matters	1.00
Sept. 19	To cash for telegram Judge Trimble Sept. 14 in re same matter	.92
Sept. 26	To cash for telegram Judge Trimble Sept. 14 in re same matter	.40
765		
Nov. 4	To time and services preparing and filing amended answer in case Moore et al v Jones	25.00
Nov. 24	To cash for 2 telegrams in re Barnett's proposition of settlement	2.00
Nov. 29	To services and advice in preparing for trial of Lumber Company v Port Arthur & Mexican S. S. Co. whose ship was libeled and Trust Co. indemnified sureties on release bond	50.00

Dec.	8	To cash for 2 telegrams regarding Trust Co. meeting in Chicago	.74
Dec.	8	To advice and services in reference to sale $91900.00 1st mortgage bonds of S. W. Mo. Light Co. and 94200 preferred and 94200 of its common stock	100.00
Dec.	9	To time and services preparing and filing answer of Guardian Trust Co. to the interplea of Jones and Ogelsbay in case of Moore et al v Jones et al	50.00
1900 Jan.	8	To time and services drawing contract appointing company agent for sale of lots at Port Arthur, Texas	15.00
Feb.	3	To cash for 2 telegrams between Mr. Stillwell and J. McD. Trimble	2.52
Feb.	9	To cash telegram J. McD. Trimble to Silas W. Pettit	.56
Mch.	9	To cash for 2 telegrams arranging Trust Co. meeting	1.24
		To cash for certified copy of judgment and order allowing appeal in Jones v Hamm	1.50
Apr.	18	To cash for deposit docket fee Company v. Mo. Water & Light Co.	3.00
Apr.	27	To advice and services in matter of instituting suit against K. C. Suburban Belt R. R. Co. in replevin for $15000 worth of railroad steel and suit for converting $10,000 other steel	150.00
Apr.	30	To docket fee in replevin suit Co. v. K. C. Sub. Belt R. R. Co.	3.00
		To cash for expenses in replevin suit Co. v. K. C. Suburban Belt R. R. Co.	.35
Apr.	30	To all advice and services in preparation for trial and trial of case wherein Jones & Ogelbay on the one side and Guardian Trust Co. on the other claiming money $16000 deposited with Board of Trade in connection with the lease of the Temple Block, case being Moore v. Jones	300.00
Apr.	30	To time and services in negotiations with D. R. Francis and conference with Kennett and reaching agreement for Mr. Martin to be President Crescent Elevator Co.	25.00
766			
May	15	To cash for telegram in re payment Williamson note by Trust Co.	.68
May	28	To cash for telephone message Trimble to Chadbourne in Chicago	4.10
May	3	To retainer and services in instituting suit against the K. C. P. & G. R. R. Co. to recover on certain coupons, including filing petition	150.00

May 4	To one day's services in all advising about and supervising obtaining possession and removal of steel rails and railroad plates involved in replevin issued and sheriff in control	25.00
May 1st 1899 to June 1st 1900.	To all services to date in suit now pending in the M. K. & T. Trust Co. against the Texarkana & Ft. Smith Rld. Co. in U. S. Circuit Court for Eastern District of Texas at Beaumont	375.00
	After the appointment of receivers Fordyce & Withers in the suit of the State Trust Co. v. K. C. O. & G. Rld. Co., et al, it was found advisable to institute suit for the foreclosure of the mortgage of the Texarkana & Ft. Smith Ry. Co. in U. S. Circuit Court for the Eastern District of Texas.	
	Accordingly, a bill was prepared for the foreclosure of the mortgage of the Texarkana & Ft. Smith Ry. Co. and filed in said Court where said suit has since been pending. (For services therein as above specified the charge is made).	
May 1st 1899 to June 1st 1900	To all services in the suit of the MK&T Trust Co. v. K. C. Shreveport & Gulf Rld. Co. et al. in the suit now pending in U. S. Circuit Court for the Western District of Louisiana, at Shreveport, from May 1st, 1899 to June 1st, 1900	250.00
	(After the appointment of receivers Fordyce & Withers in the suit of the State Trust Co. v. K. C. P. & G. Rld. Co. et al, it was found necessary to file a bill for the foreclosure of the mortgage of the K. D. Shreveport & Gulf Rld. Co. covering its railroad and other property in the Western District of Louisiana.	
	For the preparation of the said bill of foreclosure, the filing of the same, and all services in said cause between said dates, the above and foregoing charge is made).	
June 12	To expenses in 2 trips Independence in matter Mo. Water & Light Co. case	1.50
June 13	To services preparing notice of trustees sale of Johana Nerder property at Carthage and having same published	10.00
767		
June 23	To time and service preparing trust deed from Janssen Place Land Co. to Trust Co.	10.00
June 30	To advice and services in preparing 3 powers of attorney to Alonzo Fernandes to effect the necessary acceptance and transfer of Trust Co. concessions, granted by the Republic of Mexico	50.00
	To services and advice in procuring from the Secretary of State, a certified copy of the Articles of Association,	

	including capital stock and change of name, of the Trust Co. and having same certified by Mexican Consul for Mr. Ball's use in Mexico	50.00
July 14	To services preparing motion for new trial and in arrest of judgment, filing and arguing same, getting time off overruling motion within which to file bond and bill of exceptions and to preparing and filing affidavit in appeal and having same allowed in case of Moore v. Jones, et al	150.00
Aug. 17	To cash for car fare to Independence on account of case of Guardian Trust Co. v. Mo. Water & Light Co	.30
Aug. 20	In time, advice and services concerning and in drawing agreement between the Trust Co. and the Air Line for the turning over of money due the Air Line and held as indemnity by the Trust Co. for executing as surety bond in sum of $15000 to Metropolitan St. Ry. Co.	75.00
Aug. 29	To cash for expenses in serving subpoenas in replevin suit, Trust Co. v. Suburban Belt	1.15
Aug. 31	To services in connection with case of Trust Co. v. Mo. Water & Light Co. consisting of advice concerning statement of accounts and the procuring of the books of the defendant company for their examination to ascertain what defendant's counter claim for $32,000 was based on	100.00
	To services in connection with making of demand on K. C. S. B. R. R. Co. for the payment of its notes and giving notice that the Trust Co. would sell the collateral security notes Sept. 7, 1900	75.00
Sept. 1	To time and services examining records of Suburban Belt Rld. Co. office and going over collateral and value of same in connection with collecting the K. C. S. B. R. R. Co. notes held by the Trust Co.	25.00
Sept. 1 to 10th	To services in connection with the taking of Wilcox deposition in case Trust Co. v. Mo. Water & Light Co. including an examination and preparation of all accounts of all dealings between the two companies for nine years	300.00
Sept. 7, 8	To one day's time in preparing for and looking after Trust Co's interests in matter of election of directors of Central Imp. Co.	50.00
768		
Sept. 13	To time and services in going to Carrollton, Mo. to look up records and facts in case of Trust Co. v. Mo. Water & Light Co.	25.00
Sept. 17	To cash for expenses for filing stipulation in case Trust Co. v. Mo. Water & Light Co.	.30
Sept. 18	To cash for expenses going to Carrollton in investigating records in case Company v. Mo. Water & Light Co.	5.00

Sept. 21	To time and services on trip to Webb City, Mo. to take depositions in case Tam-Blyn v. Victoria Zinc Mining Co. in which receiver for Mining Co. was sought	25.00
Sept. 25	To time and services going to and in Chicago, preparing for plea and answer in Cambria Steel Co. v. K. C. Suburban Belt Ry. Co. et al., in U. S. Circuit Court	500.00
Sept. 29	To cash for expenses going to Webb City, Mo. to take depositions in case Tamblyn v. Victoria Zinc Mining Co.	6.10
Oct. 5	To cash for certified copies of the pleadings in case Tamblyn v. Victoria Zinc Mining Co.	4.00
Oct. 3-6	To time and services four days in looking over the minute book of K. C. Suburban Belt Ry. Co. and Consolidated Terminal Ry. Co. and Consolidated Rld. Co., also Journal records and taking extracts from the same to use in suit Cambria Steel Co. v. Trust Co.	200.00
Oct. 8-11	To four days' time and services in Chicago in consultation with Mr. Chadbourne, concerning suit Cambria Steel Co. v. Trust Co. and four foreclosure suits brought by Provident Life & Trust Co. against several parts of the Suburban Belt Rld. Co.	400.00
Oct. 8-11	To four days' time and services of C. A. Braley in Suburban Belt Rld. Office looking up facts to contest the Cambria suit	200.00
Oct. 9	To retainer, time and services in preparing and filing answer of Company in case First Natl. Bank of Kansas City v. Trust Co., a suit on note for $25,000 made by the Suburban Belt Rld. Co. and endorsed by Trust Co. as accomodation for Suburban Belt Co., the answer filed pleading ultra vires	300.00
Oct. 15	To time and services meeting with attorneys of Oglesbay and Jones on various occasions to go over and agree on bill of exceptions in Moore v. Jones and to final agreements thereon and having said bill of exceptions certified and filed	25.00
Oct. 12	To time and service in Chicago taking Mr. Stillwell's deposition in case Trust Co. v. Mo. Water & Light Co.	75.00
769		
Oct. 16	To cash for expressage on package from Byrne at Texarkana	.25
Oct. 17	To cash for certificates in cash Finch v. Company necessary in obtaining this affirmance	10.00
Oct. 17	To cash for certificate in case Finch v. Company to obtain affirmance of judgment	1.00
Oct. 17	To cash for telegram Sept. 25, Trimble & Braley to Chadbourne	1.25

Oct. 17	To cash for telegram Sept. 28th to the Clerk of Circuit Court at Carthage, Mo. in case Tamblyn v. Victoria Mining Co.	.67
Oct. 17	To cash for telegram Trimble to Chadbourne Oct. 5	.36
Oct. 17	To cash for telegram Trimble to Chadbourne Oct. 6	.36
Oct. 20	To cash for expenses of D. W. Eaton to Leavenworth on account of case Provident Life & Trust Co. v. Union Terminal Rld. Co.	1.74
Oct. 22	To cash for copy "Ex. 1" attached to bill in case of Cambria Steel Co. v. Suburban Belt	2.40
	To cash for telegram Trimble & Braley to Clerk United States Circuit Court	1.12
	To retainer and services in preparing and presenting petition of Trust Co. to be made a party to foreclosure suit of Provident L & T Co. v K. C. Suburban Belt Co. so as to resist foreclosure in the U. S. Court	750.00
	To retainer and services in preparing and presenting petition of Trust Co. to be made a party to suit of Provident L & T Co. v. K. C. & Independence Air Line et al., so as to resist foreclosure in U. S. Court	750.00
	To retainer and services in preparing and presenting petition of Trust Co. to be made a party to suit of Provident L & T Co. v Union Terminal Co. et al, so as to resist foreclosure in U. S. Circuit Ct.	750.00
	To retainer and services in preparing and presenting petition of Trust Co. to be made a party in suit Provident L & T Co. v. K. C. Suburban Belt Co. to foreclose mortgage on Consolidated Terminal Co. so as to resist forecolsure in U. S. Court	750.00
June 27	To cash for telephone to Judge McKeighn, St. Louis, about taking company out of hands of receiver	2.00
	To cash for telegram to Judge Amos M. Thayer, St. Louis	.40
July 11th & 12th	To time, services and advice in drawing application of company for discharge of receiver of company	200.00
770		
July 11	To cash for telegram to McKeighan	.37
July 18	To cash for telegram to McKeighan	.33
Aug. 5	To cash for telegram to Judge Thayer	.92
	To cash for telegram to Judge Thayer	3.40
	To cash for cablegram Aug. 13, J. McD. Trimble to Kuhn—London	4.76

Sept.	4	To cash paid for copies of the objections of complainants in Bierce case	5.18
Sept.	13	To cash for copies of documents in Bierce case	.85
Sept.	17	To expenses of J. McD. Trimble to St. Louis and return, to argue exceptions to parts of bill in Bierce case	27.25
Oct.	1	To cash for copies of documents for use in Bierce case	9.20
		To cash for copy of opinion of court in case of Moore v. Jones	1.00
		To expenses of J. McD. Trimble to St. Louis, Oct. 4, in matter of discharge of receiver	26.50
Oct.	20	To cash for copy of order denying applications leave to file amended and supplemental bill	.55
Oct.	22	To cash for telegram Oct. 2 from Judge Thayer	.35
Oct.	25	To all time and services in matter of application of Trust Co. for discharge of receiver and return of its property to the constituted authorities of the company subsequent to filing of application for such discharge	1500.00
Nov.	13	To cash for telegram to Clerk U. S. Circuit Court at Beaumont, Texas	.95
Dec.	3	To cash for telegram Blanchette to Trimble & Braley	.65
Dec.	8	To cash for express on briefs in case of Moore v. Jones	.50
Dec.	31	To cash for telegram Dec. 15 from W. H. Pope, Marshall, Texas	.83
Nov.	19	To one day's time and services in reference to resisting motion filed by Lathrop, Morrow, Fox & Moore to set aside order of Federal Court appointing Wash Adams, receiver of Mo. Elevator & Terminal Co. and of Central Improvement Co.	50.00
Nov.	21	To one day's services and time in taking testimony on behalf of plaintiff in case of Cambria Steel Co. v. Guardian Trust Co.	50.00
771			
Nov.	22	To time and services rendered in same matter	50.00
		To cash for telegram sent Oct. 26, Trimble to McKeighan	.25
		To cash for telegram sent Oct. 26, Trimble to Chadbourne	.54
		To cash for telegram sent Oct. 27, Trimble & Braley to to Guardian Trust at Chicago	.30
		To cash for telegram sent Oct. 30, Trimble to Chadbourne at Chicago	.38
		To cash for telegram sent Oct. 27, Trimble & Braley to Judge Bryant	.34

	To cash for telegram from Judge Bryant to Trimble & Braley	.44
	To half cash for telegram sent Oct. 29 to Judge Bryant	4.6
	To half cash for telegram Oct. 31, to Judge Bryant	.34
	To half cash for telegram Oct. 31 from Judge Bryant	.30
	To half cash for telegram Oct. 31, from Judge Bryant	.34
	To half cash for telegram Eaton to Oglesbay	.50
	To half cash for telegram Nov. 1st, Trimble & Braley to Eaton	.76
	To half cash for telegram Nov. 1st, Braley to W. H. Pope	.32
Nov. 26	To cash for telegram Nov. 14, Trimble to Chadbourne	.38
	To cash for telegram Nov. 16, Trimble to Chadbourne	.80
	To cash for telegram Nov. 22, Trimble to V. Cleveland	1.75
	To half expenses J. A. Eaton going to and at Sherman, Texas, Nov. 1 to 14 on account intervention in Port Arthur Channel & Dock receivership	10.38
	To cash for notary fees acknowledgment of affidavit of Mr. Dean	.25
Nov. 27	To continuous services Oct. 24, to Nov. 27 in case Bierce et al v Guardian Trust Co. for appointment of receiver, preparing evidence and arguing demurrer at Kansas City and resisting application for appointment of receiver at St. Louis	3000.00
Nov. 28	To cash for telegram Nov. 23, Trimble to Chadbourne	.64
	To cash for telegram Nov. 28, Braley to Gilbert	1.00
	To cash for telegram Trimble & Braley to Chadbourne	2.90
772	To cash for telegram to Sharritt	.37
	To cash for telegram to Wing & Chadbourne from Trimble & Braley	.50
	To cash for telegram Trimble & Braley to J. E. McKeighan	.31
	To cash for copy of complaint Provident Life & Trust Co. v. Union Terminal R. R. Co.	4.50
1901 Oct. 11	To cash for ticket to St. Louis and return to take up demurrer in Bierce case	9.50
Oct. 17	To cash for railroad fare and sleeper to St. Louis and return in matter of order in Bierce case	11.50
Oct. 21	To services in arguing demurrer to bill of complaint in case of W. W. Bierce et al v. Trust Co. before Judge Thayer at	

		St. Louis and procuring leave to except to certain parts of bill and answer the remainder	250.00
		To cash for telegram Trimble & Braley to Chadbourne, Chicago, Oct. 17	.52
Oct.	18	To cash for telegram Trimble & Braley to Chadbourne, Chicago, Oct. 18	.40
Nov.	15-25	To services in preparing exceptions to parts of bill in case of Bierce v. Guardian Trust Company and in preparing answer to remainder of bill	300.00
Dec.	3	To cash for expressage on papers in Bierce case	.35
1902 June	23	To cash for telegram A. M. Thayer to C. A Braley	.81
		To cash for telegram to C. A. Braley from Judge McKeighan	.21
Oct.	27	To cash for telephone to McKeighan at St. Louis, Oct. 23, regarding Bierce case	2.00
		To cash for telephone to Chadbourne at Chicago, Oct. 23, regarding Bierce case	2.75
Oct.	29	To cash for telegram Trimble to Chadbourne, Oct. 19	.92
Oct.	30	To cash for certified copies of order in Bierce case	2.25
Oct.	30	To one day's time in investigating books of K. C. Suburban Belt Co. for preparation of Trust Co. defense in Cambria suit	50.00
		To services on preparation of intervening petition in suit of Barnett & Record Co. v. Port Arthur Channel & Dock Co. in U. S. Circuit Court at Beaumont, and obtaining order for filing same from Judge Bryant at Sherman, Texas	200.00
773			
Oct. &		To services and counsel and opinions in injunction suits in Calcasieu Parish, District Court to enjoin railroad and subsidies	50.00
		To services, counsel and opinions in the cases in De Soto Parish, La. to enjoin subsidy tax voted by the town of Mansfield	50.00
Nov.	1	To retainer and services in preparing and filing petition in Trust Co. to be made a party to case of Provident L & T Co. v. Union Terminal Rld. Co. in U. S. Court for District of Kansas so as to be able to resist foreclosure of mortgage	500.00
Nov.	5	To time and services in preparing and filing answer to bill of complaint of Provident Life & Trust Co. to foreclose mortgage on K. C. Suburban Belt Rld.	250.00

		To services in preparing and filing answer to bill of complaint of Provident L & T Co. to foreclose mortgage of Consolidated Terminal Railway	250.00
		To services preparing and filing answer to bill of complaint of Provident L & T Co. to foreclose mortgage of Union Terminal Rld. Co.	250.00
		To services in preparing and filing answer to bill of complaint of Provident L & T Co. to foreclose mortgage on K. C. & Independence Air Line	250.00
		To services in preparing and filing answer in case Cambria Steel Co. v. Guardian Trust Co. et al, in U. S. Circuit Court	750.00
1903 Jan.	12	To cash for expenses on two trips to Jefferson City, Jan. 9 and 12, to argue Jones v. Hamm in Supreme Court	34.60
Feb.	18	To cash for expressage on briefs in Chicago Zinc Mining case	.25
Feb.	21	To cash for copy of opinion in Court in Moore v. Jones	9.50
Feb.	26	To cash for telegram Jan. 26, F. B. Wilcox to C. A. Braley	.50
		To cash for telegram Clerk Supreme Court Feb. 13 to Trimble & Braley in Jones v. Hanmm	.25
Mar.	4	To expenses C. A. Braley and Wash Adams to Sherman, Texas	45.00
Mar.	17	To cash for copy of opinion State Trust Co. v. K. C. Pittsburg & Gulf Rld. Co.	5.35
Mar.	18	To expenses case Mellier v. Trust Co.	.20
Mar.	20	To cash for copies of order a ppointing Judge Black and Wash Adams Receivers	2.70
774			
Mar.	21	To cash paid H. H. Lyon for legal services rendered Guardian Trust Co. in Chicago	10.00
Mar.	27	To cash for expenses of C. A. Braley to Joplin, Mo. Mar. 26 to 28 in Zinc case	17.55
Apr.	4	To cash for expenses verifying affidavit of service of notice of hearing at Sherman, Texas, of supplemental and intervening petitions in Port Arthur Channel & Dock suit	.25
Apr.	6	To cash for telegram Trimble to D. E. Bryant March 13	.50
		To cash for telegram Supreme Court Clerk to Trimble & Braley March 19	.35
		To cash for telegram Mar. 20, Trimble & Braley to Clerk of Supreme Court	.25

		To cash for telegram Mar. 23, Clerk Supreme Court to Trimble & Braley	.71
Apr.	11	To cash for certified copy of order in Moore v. Jones	1.00
Apr.	14	To cash for expenses verifying motion in Moore v. Jones	.75
Apr.	18	To cash for telegram Apr. 8 Clerk of Court to Trimble & Braley in Port Arthur Channel & Dock case	.68
		To cash for telegram Apr. 9 to Clerk of Court from Trimble & Braley	.40
		To cash for telegram Trimble & Braley to Clerk in Port Arthur Channel & Dock Case	.96
		To cash for telegram Apr. 16 Clerk to Trimble & Braley in same case	1.00
Apr.	25	To cash for expressage	.30
Apr.	22	To cash for expenses C. A. Braley to Sherman, Texas	25.68
Apr.	25	To cash for telegram Scott to Trimble & Braley	.61
Apr.	28	To cash for telegram Braley to Jos. Kling	2.63
Apr.	29	To cash for telephone C. A. Braley to Scott in Chicago Zinc Mining case	.90
		To cash for telegram Braley to C. N. Stark	.53
		To cash for telegram Braley to J. A. Cameron	.85
		To cash for telegram Trimble & Braley to Clerk U. S. Circuit Court	.50
Apr.	30	To cash for telegram from Judge Bryant to Trimble & Braley	.50
		To cash for telegram from C. N. Stark to C. A. Braley	
775			
May	1	To cash for two telegrams Trimble & Braley to Clerk U. S. Circuit Court	.96
May	2	To cash for telegram Judge Bryant to Trimble & Braley	.50
May	4	To cash for telegram J. McD. Trimble to C. A. Braley at Sherman, Texas	.96
		To cash for telegram from Trimble & Braley to C. A. Braley at Sherman, Texas	.50
May	6	To cash for telegram C. A. Braley to Jos. Kling	1.20
		To cash for telegram C. A. Braley to C. N. Stark	.92
		To cash for telegram Judge Bryant to Trimble & Braley	.43
May	22	To half cost copy order Provident Life & Trust Co. v. Port Arthur Channel & Dock Co.	1.10

	To half C. A. Braley's expenses to Beaumont, May 13 to 20 account Port Arthur Channel & Dock case	32.50
May 27	To cash for telegram Trimble & Braley to Bates in same case	2.06
May 27	To cash for telegram Trimble & Braley to Bates in same case	.50
June 18	To half C. A. Braley's expenses to Sherman, Texas, June 14 to 18 1903	22.25½
June 19	To cash for telegram Bates to Trimble & Braley	.65
June 30	To cash for telephone to Wilcox at Chicago in Chicago Zinc Mining Case	1.40
	To cash for telegram June 13 to Braley about hearing Port Arthur Channel & Dock case at Sherman, Tex.	.37
	To cash for telegram June 19 to Bates	.50
	To telegram June 23, to Bates	.86
July 11	To cash for telegram E. L. Martin to Heynecker	1.46
July 29	To half cash paid for copy report of commissioner on Provident Life & Trust Co. v. Port Arthur Channel & Dock Co.	3.00
Aug. 20	To cash for telegram to and from C. L. Bates	.70
Sept. 14	To cash for telegram Trimble & Braley to Ivins, Kidder & Melcher, New York	1.01
Oct. 10	To cash for telegram Sept. 3 to Ivins, Kidder & Melcher	.98
Oct. 30	To cash for copy of order appointing receiver of O. K. C. & E. R. R. Co.	1.50
776		
Nov. 21	To cash for telegram from C. L. Bates regarding ruling of Judge Bryant	1.18
Dec. 1	To cash for expressage briefs in First Natl. Bank case	.45
Dec. 10	To half C. A. Braley's expenses to Beaumont, Texas, account hearing before Judge Bryant	41.50
Dec. 11	To cash for acknowledgment to four certificates of E. L. Martin to the plea to Jurisdiction	1.00
Dec. 12	To cash for telegram Trimble & Braley to Bates	.83
1904 Feb. 8	To half telegram Trimble & Braley from C. L. Bates	.43
Feb. 12	To half telegram Trimble & Braley to C. L. Bates	.31
Feb. 13	To half telegram Trimble & Braley from C. L. Bates	.28

Feb.	29	To half telegram Trimble & Braley to C. L. Bates	.52
			$20,302.73

Second. As against the foregoing amount, the defendant is entitled to credit as follows:

Sept. 1900	25	By check on account of services in the case of Cambria Steel Co. v. Kansas City Belt Railway Co. in the United States Court	$ 1,000.00
Nov. 1900	28	By check on account of services in Bierce case in the United States	2,000.00
Jan. 1903	24	By one-half rebate on C. A. Braley's Wabash Ticket on trip to Philadelphia	3.67
Feb. 1903	28	By cash account Port Arthur Channel & Dock Co. expenses	100.00
Apr. 1903	25,	By cash expenses to Sherman, Texas, in Port Arhutr Channel & Dock Co. case	100.00
July 1904	12,	By cash $790.81	790.81
		Total	$ 3,994.48

Third. Such items in the account sued on as are omitted in paragraph one of this report are disallowed.

Fourth. As to the claims sued on for services in what is called the Bierce case and the Cambria case and in reference particularly to the charges of a retainer in each of those cases, I am of the opinion that under the circumstances detailed in evidence such charges ought not to be allowed independently of and in addition to the reasonable value of the services rendered, and I find the reasonable value of those services to be the respective amounts stated in the first paragraph hereof.

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Fifth. On the issues joined by the defendants first counterclaim (being count Sixteen of the answer) and the reply I find for the plaintiffs, and find that there was no such want of care and skill on their part as to render them in any way liable to the defendants, but that they rendered the services in question with great ability and faithfulness.

Sixth. On the issues joined by the defendants second counterclaim (being count Seventeen of the answer) and the reply, I find for the plaintiffs and find as in paragraph five.

Seventh. On the issues joined by the defendants' third counter-claim (being count Eighteen of the answer) and the

reply, I find for the plaintiffs. The claim is for $6000.00 paid by the defendant to Mr. Wash Adams for legal services rendered to the defendant but which defendant claims should be charged against the plaintiffs on the asserted ground that the employment of Mr. Adams was on the plaintiffs' personal account, and the cost of his service should, therefore, be borne by the plaintiffs. There is no sufficient evidence to sustain this contention but abundant evidence from which I find that the fact was not as defendant alleges.

Eighth. The fourth counter-claim of the defendant (being count Nineteen of the answer) alleges a contract between plaintiffs and defendant whereby certain claims were to be prosecuted by plaintiffs, the defendant to advance necessary costs and one-half of the net proceeds derived by the plaintiffs in said causes to be paid to defendant; that under that arrangement, defendants had advanced in that matter $942.37 in the way of costs; that plaintiffs had collected on said claims $50,000.00 and that defendant is en-
778 titled to a judgment against plaintiffs for $250,000.00 and the costs so advanced. The facts from the evidence are that J. McD. Trimble, C. A. Braley, John A. Eaton and W. E. Swensel had made an arrangement for the prosecution of the claims mentioned for 45% of the amount recovered. Mr. Braley made a contract with the defendant on behalf of himself and his associates, whereby the defendant was to advance the expenses and furnish bonds for the conduct of the suits, and in consideration therefor receive 9% of the amount realized. Under this arrangement, prior to the appointment of a receiver of the defendant, it had advanced as costs $942.37 in the cases mentioned. After the appointment of a receiver of the defendants and its assets were taken into the custody and charge of the United States Court, the receiver declined to proceed with the agreement further or to make any additional advances. Whereupon the original four parties named, conducted the business thereafter at their own expense. The details of this business, what the cases were, what the expenses were, what the amount realized, what remains to be done have not been shown in this hearing. Mr. Braley says (Page 533), "I do not know the amount, but think there was recovered for our client, something over Forty Thousand Dollars" and that the expenses amounted to "several thousand dollars". None of the parties nor defendant's receiver presented the matter of the further performance of the agreement to the court for its instruction and direction, but all connection between the defendant and the four parties originally associated terminated

in respect to this matter upon the appointment of the receiver. Under the facts and those detailed in evidence no case on behalf of defendant on this counter-claim has been sustained, in my judgment, for the reason that the contract proven is wholly variant from the one alleged, that it was made with other and additional parties besides the plaintiffs, and that no definite showing has been made as to the extent, if any, to which defendant is entitled to participate in the net amount realized or to be realized in the con-
779 duct of that business. A consideration has been urged, with much fairness, that defendant ought to be at least reimbursed for the amount of expenses which it did advance. That may be so. It may or may not be entitled also to a pro tanto participation in the proceeds recovered, and that may be hereafter recovered, but its rights in that regard are against the four individuals with whom the arrangement was made and not against the plaintiffs only. The cause of action alleged has not been proven and I find the issue on this counter-claim and reply thereto for the plaintiffs, with the recommendation that defendant, if so advised, be allowed to dismiss it.

Ninth: On the issues joined by the defendant's fifth counterclaim (being count Twenty of the second amended answer) and the reply, I find for the defendant in the sum claimed of $42.50 and find the facts as alleged in said count.

Tenth. The defendant presented two series of requests for findings of facts and declarations of law, one printed and the other typewritten. I have marked each of them given or refused and return them herewith and make them part of this report.

Eleventh. The total amount which I find due the plaintiffs from the defendant, exclusive of credits, is $20,302.73.

I find the defendant entitled to credit on this amount in the sum of $4036.98, which includes the amount found for defendant on its fifth counter-claim, count Twenty of the answer. This leaves a balance due plaintiffs from defendant of $16265.75, for which I recommend judgment be entered for plaintiffs, with interest at 8% from August 30th, 1905, the date of filing this suit.

Twelfth. The costs of this hearing consists of the bill of the stenographer who took the testimony, amounting to $443.90, one-half of which has been paid by plaintiffs and one-half by defendant, and the stenographer's bill for writing this report, amounting to $15, and whatever the court may

allow the referee for his services in the hearing and
780 consideration of the case. As to referee's allowance, I am not able to report the time spent. The actual hearing with the various adjournments is shown by the transcript, and the arguments made and time spent in the review of the evidence, the readings of the briefs and consideration of the contention of the parties and preparation of the report, I am not able to state. Whatever the counsel of the parties and the court may determine to be a reasonable allowance will be satisfactory to me.

Respectfully submitted,

E. E. BALL, Referee."

Mr. Rosenberger: I now offer in evidence the final judgment in the Trimble & Braley suit above referred to entered in the Circuit Court of Jackson County, Missouri, on or about the first of August, 1912, and entry of satisfaction thereof.

Mr. Smith: We object to those for the same reasons.

The Master: The objections will be overruled.

To which last action and ruling of the Master in overruling objections to the introduction in evidence of the final judgment, and entry of satisfaction thereof, in the Trimble & Braley suit, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel at the time duly excepted.

Said final judgment, and entry of satisfaction thereof, in the Trimble & Braley suit, last above received in evidence by the Master, are in words and figures as follows, to-wit:

"Be It Remembered that on the 71st day of the regular May Term, 1912, of the Circuit Court of Jackson County, Missouri, at Kansas City, the same being the 5th day of August, 1912, the following proceedings were had and made of record before Hon. W. O. Thomas, Judge of Assignment Division in the cause entitled

J. D. McD. Trimble and C. A. Braley, partners as Trimble & Braley, Plaintiffs,

No. 25346 vs.

Guardian Trust Company, Defendant.

Now on this day come the plaintiffs by John A. Eaton,
781 their attorney, and the defendant by its attorney, Edward C. Wright, and this cause came on for final hear-

ing and decision and by agreement of the parties and in accordance with the mandate of the Supreme Court of the State of Missouri, it is, by the court, considered and adjudged that the plaintiffs J. McD. Trimble and C. A. Braley, partners under the firm name and style of Trimble and Braley, have and recover of and from the defendant, the Guardian Trust Company, the total sum of principal and interest, to this date of $12,580.41, and that the defendant pay the costs herein taxed, for which judgment and costs let execution issue. Thereupon plaintiffs acknowledge satisfaction of said judgment in open court.

State of Missouri,
County of Jackson—ss.

I, W. H. Harper, Clerk of the Circuit Court, within and for the County and State aforesaid, do hereby certify that the above and foregoing is a full, true and complete copy of the decree in the cause wherein J. McD. Trimble, et al, are plaintiffs and Guardian Trust Company is defendant as the same appears of record in my office.

In Witness Whereof, I have hereunto set my hand and affix the seal of said Circuit Court, at office in Kansas City, this 7th day of May, 1924.

W. H. HARPER, Clerk,
By Wm. M. Anderson, Deputy."

(Seal)

Mr. Smith: Mr. Rosenberger, at the last session, demanded we produce certain vouchers of the Kansas City Southern Railway Company showing bills rendered by Mr. Jetmore and amounts paid to him by the Kansas City Southern Railway Company. I offer in evidence, the first three bills that were made by Mr. Jetmore, being Voucher 421, issued in March, 1923, No. 262 in April 1903, and No. 86 issued in May, 1903, covering the first ten volumes of the original transcript of the record.

Mr. Rosenberger: That is objected to for the reason that it is not within the province of the stenographer by any form of bills which he may render to determine for himself
782 the arrangement and order of the court touching the payment of stenographic fees by the Master.

This objection was by the Master overruled, to which ruling the Guardian Trust Company duly excepted.

Said vouchers 421, 262 and 86 were thereupon received in evidence by the Master and were marked by the Reporter as

Kansas City Southern Railway Company's Exhibits 11, 12 and 13, respectively, and, omitting the captions, are in words and figures as follows:

Kansas City Southern Railway Company's Exhibit No. 11
(Paid by Voucher 421)

"Hearing of Testimony Before Hon. Shannon C. Douglass, Special Master.

Kansas City, Mo. March 26th, 1903.

To H. A. Jetmore, Shorthand Reporter, Dr.

To taking and transcribing testimony in above entitled cause, on hearings before Hon. Shannon C. Douglass, Special Master, covering period from Thursday, January 15th, 1903, to Saturday, March 14th, 1903,—Transcript pages 1 to 314, inclusive. Original and two carbon copies.

606 folios at 15c per folio $90.90"

Kansas City Southern Railway Company's Exhibit No. 12.
(Paid by Voucher 262.)

"Hearing Before Hon. Shannon C. Douglass, Special Master.
Kansas City, Mo., April 29th, 1903.

To H. A. Jetmore, Shorthand, Dr.

To transcript of testimony, pages 314 to 506, both inclusive, 672 folios at 15¢ $100.80

Partial payment on transcript of vouchers 399.20

Total $500.00"

Kansas City Southern Railway Company's Exhibit No. 13.

(Paid by Voucher 86).

"Hearing Of Testimony Before Hon. Shannon C. Douglass, Special Master
Kansas City, Mo., May 20th, 1903.

To H. A. Jetmore, Shorthand Reporter, Dr.

To transcript of testimony and vouchers in above entitled cause—Vol. 1 to Vol. 10, both inclusive, Testimony, Vol. 1 and Vol. 2,—pages 1 to 508, inclusive, 2926-2/5 pages at 50¢ per page $ 1463.20

Mar. 31-1903	Credit by voucher in my favor for	$90.90	
Apr. 29-1903	Credit by voucher in my favor for	500.00	590.90
	Balance due		872.30"

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783 Mr. Smith: I want the record to show that all the vouchers we were able to find covering those Jetmore bills have been handed to Miss Parlin and are subject to inspection by Mr. Rosenberger if he cares to offer any others.

Mr. Rosenberger: I will offer in evidence the balance of the bills rendered by Mr. Jetmore which had been produced here this morning by Mr. Smith, being seventeen in number, together with five copies of vouchers which have been produced in lieu of the original bills of Mr. Jetmore, which Mr. Smith states he was unable to find.

Mr. Smith: I object to the introduction of these statements and copies of vouchers in evidence for the reason that it is unnecessarily encumbering the record.

The foregoing objection was by the Master overruled, and said statements and copies were thereupon received in evidence by the Master, to which ruling, the Kansas City Southern Railway Company and the Cambria Steel Company duly excepted.

Said seventeen statements and copies of vouchers, marked Guardian Trust Company's Exhibit 4½ to 25, inclusive, are, omitting the captions, in words and figures as follows:

Guardian Trust Company's Exhibit 4½

"Hearing of Testimony Before Hon. Shannan C. Douglass, Special Master,

Kansas City, Mo., Oct. 7th, 1903.

To H. A. Jetmore,
Shorthand Reporter, Dr.

To transcript of Exhibits to testimony in above entitled cause, on hearing before Hon. Shannon C. Douglass, Special Master, as follows:

K. C. & N. C. R. R. Bond Ledger—70¢ pages at 50¢	$ 35.00
Union Terminal R. R. Bond " 80	40.00
K. C. Suburbon Belt RR " " 77	38.50
" " " " Stock Register 56	28.00
Cons. Term. Ry. " " 24	12.00
Union Ter. R. R. " " 50	25.00
K. C. & I. A. Line Co. Bond Ledger 41	20.50
Journal Vouchers of Guardian Trust Co., #5249, etc.,—27 vouchers—12-½ pages at 50¢	6.75
Willey's Letter to Judge Black, 12 "	6.00
Extract of Minute Book of Guardian Trust Co., 7 pages at 50¢	3.50
Articles of Association & By-Laws of Guardian Trust Company, 10 pages, at 50¢	5.00

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Willey's Statement of K. C. Term'l Const. Co. account with M. K. & T. Trust Co., 21 pages at 50¢	$ 10.50
Willey's Statement—account—Trust Funds of M. K. & T. T. Co., as applies to K. C. T. C. Co. 14 pages at 50¢	7.00
Willey's Statement—account—Trust Funds, M. K. & T. Trust Co., as applies to 2nd St. Imp. Co., 10 pages at 50¢	5.00
Statement and Petition, regarding 1st Mtg. K. C. & N. C. Bonds and Coupons held by Guardian Trust Co. as collateral behind Sub. Belt notes, 6 pages at 50¢	3.00
Willey's statement—a/c of K. C. Terml. Con. Co. with M. K. & T. Co., —Ledger #2. pp 222, 225, 233, 18 pages	9.00
	$254.75
To Printer's Bill, for printing vouchers, in May, 1903	58.50
Total	$313.25"

"Hearing Of Testimony Before Hon. Shannon C. Douglass, Special Master.

Kansas City, Mo., Oct. 7, 1903.

To H. A. Jetmore,
Shorthand Reporter, Dr.

1903.

To Shorthand work in above entitled cause, as follows:

Sept.	9	Abstract of Minutes, etc.	12 pages at 50¢	$ 6.00
"	10	" " " "	9 "	4.50
"	12	" " " "	6 "	3.00
"	12	List of Officers & Directors:		
		Guardian Trust Company,	12 "	6.00
		Union Terminal R. R. Co.	4 "	2.00
		K. C. & Ind. Air Line Co.	4 "	2.00
		2nd St. Improvement Co.	4 "	2.00
"	14	Abstract of Minutes, etc.	3½ "	1.75
"	15	" " " "	3½ "	1.75
"	17	" " " "	15 "	7.50
"	19	" " " "	18 "	9.00
"	19	" " " "	10 "	5.00
"	19	" " " "	23 "	11.50
"	20	" " " "	4 "	2.00
		Total,		$64.00"

Said last two bills, attached to Voucher No. 710, dated October 8, 1903, are receipted for by Mr. Jetmore on October 12, 1903.

Guardian Trust Company's Exhibit 5.

"Hearing of Testimony Before Hon. Shannon C. Douglass, Special Master.

Kansas City, Mo. Nov. 25, 1903.

To H. A. Jetmore,
Shorthand Reporter, Dr.

To transcript of testimony and exhibits in above entitled cause, on hearing before Hon. Shann C. Douglass, Special Master, Balance of charge for Volume 11 and Volume 12,—page 5678 to 6679.
504 pages at 50c per page $ 252.00

785 Oct. 9, 1903.
To shorthand work, preparing statement as to K. C. & N. C. R. R. Co. for counsel.
27 pages at 50¢ per page $ 13.50

Oct. 20, 1903.
To shorthand work, preparing statement as to property in name of Central Improvement Co., for counsel,
9½ pages at 50¢ per page 4.75

Total $270.25"

Said bill, attached to Voucher No. 160, dated November 27, 1903, is receipted for by Mr. Jetmore on December 3, 1903.

Guardian Trust Company's Exhibit 6.

"Hearing Of Testimony Before Hon. Shannon C. Douglass, Special Master.

Kansas City, Mo. October 25th, 1904.

To H. A. Jetmore,
Shorthand Reporter, Dr.

To transcript of Testimony in above-entitled cause on hearing before Hon. Shannon C. Douglass, Special Master.
Part 3 of Volume 15:—Pages .... to .....
140 pages at 50¢ per page $ 70.00

Said bill is attached to Voucher No. 228, dated October 25, 1904, and receipted for by Mr. Jetmore on October 29, 1904.

Guardian Trust Company's Exhibit 7.

"The Kansas City Southern Railway Company
to H. A. Jetmore, Dr.
Shorthand Reporter,
Kansas City, Mo.

1905
Feb. 28 For transcript of testimony in Guardian Trust Company Accounting case; as per bill hereto attached, dated Feb. 27, 1905, as follows:
806 pages at 50¢ per page $403.00"

Guardian Trust Company's Exhibit 8.

"Hearing Before Honorable Shannon C. Douglass, Special Master.

Kansas City, Mo., March 28, 1905.

To H. A. Jetmore,
Shorthand Reporter, Dr.

To transcript of Testimony in above-entitled cause, on hearing before Honorable Shannon C. Douglass, Special Master:
Continuation of John C. Telfer's testimony—
192 pages—Volume "16"
830 pages—Volume "18"—Johnson's testimony

1025 pages at 50¢ per page $512.50

Said bill is attached to Voucher No. 481, dated March 29, 1905, and receipted for by Mr. Jetmore on March 31, 1905.

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786 Guardian Trust Company's Exhibit 9.

"Hearing Before Honorable Shannon C. Douglass, Special Master.

Kansas City, Mo., April 17th, 1905.

To H. A. Jetmore,
Shorthand Reporter, Dr.

To transcript of testimony in above-entitled cause on hearing before Honorable Shannon C. Douglass, Special Master.
23 pages —Testimony of Col. Sam'l F. Scott
772 " " " H. B. Johnson

795 " at 50¢ per page $397.50"

Said bill is attached to Voucher No. 77, dated April 19, 1905, and receipted for by Mr. Jetmore on April 21, 1905.

Guardian Trust Company's Exhibit 10.

"The Kansas City Southern Railway Company

To H. A. Jetmore, Dr.,
Kansas City, Mo.

1905
May 15 For bill dated May 10, 1905, transcribing testimony in Guardian Trust Accounting case, as per bill attached, 743½ pages at 50¢ per page $371.75"

Guardian Trust Company's Exhibit 11.

"Hearing Before Honorable Shannon C. Douglass, Special Master.

Kansas City, Mo. June 12th, 1905.

To H. A. Jetmore,
Shorthand Reporter, Dr.

To transcript of testimony in above-entitled cause, on Hearing before Hon. Shannon C. Douglass, Special Master:

Indexes and Title Covers, Vol. 16 to 21, incl.
1 page —Volume 16,
1 page Volume 17,
12 pages Volume 18,
11 pages Volume 19,
17 pages Volume 20,
11 pages Volume 21,

53 pages,
30 pages, Johnson Exhibit '820—2nd Mtge. Air Line
5 pages, Johnson Exhibit '721'—Commissioners' Award—Vol. 20, pages; 0652 to 10656, incl.
2020 pages, Belt, Belt Constructing—K. C. Terml. Constg. Co. Air Line,—Consolidated Terminal,—Fairmount Amusement Co., Central Imp. Co. and Northern Townsite Co.—Journal and Cash Vouchers and Cash Tickets

Total 2108 pages, at 50¢ per page $1054.00"

Said bill is attached to Voucher No. 42, dated June 13, 1905, and receipted for by Mr. Jetmore on June 16, 1905.

787 Guardian Trust Company's Exhibit 12.

"Hearing Before Honorable Shannon C. Douglass, Special Master.

Kansas City, Mo. July 10th, 1905.

To H. A. Jetmore,
Shorthand Reporter, Dr.

To Transcript of Testimony in above-entitled cause, on hearing before Hon. Shannon C. Douglass, Special Master.

1655 pages—Balance of Vouchers of K. C. S. B. R. R. Co.
185½ " Testimony—balance of Volume No. 25, Index &c.

1840½ " at 50¢ per page $920.25"

Said bill if attached to Voucher No. 33, dated July 11, 1905, and receipted for by Mr. Jetmore on July 15, 1905.

Guardian Trust Company's Exhibit 13.

"Hearing Before Honorable Shannon C. Douglass, Special Master.

Kansas City, Mo. August 4th, 1905.

To H. A. Jetmore,
Shorthand Reporter, Dr.

To Transcript of Testimony in above-entitled cause, on hearing before Hon. Shannon C. Douglass, Special Master.
2 pages,—Johnson's Exhibit '197',—Vol. 15, p. 8219½
65½ pages,—Additional Vouchers, Vol. 33
36½,—Transcript of account of 2nd Street Improvement Co. with Trust Co. (from Cambria)
46 pages,—Letters showing domination of Belt Company by Trust Company.
1 page—Certificate of Normon & Robertson, Abstractors.
3½ pages,—Deed of Release,—Trust Co. to Belt Company.
13 pages,—Letters and Time Cards in regard to K. C. & N. C. R. R. Co. (Tronsonhauser's Testimony)
263½ pages,—Ingel's Exhibits.
110 pages,—Subscription Contracts for Consolidated Terminal Railway Company bonds.
314 pages,—Bolman's Exhibit—Profit & Loss Account of Trust Company's and vouchers covering same.
177½ pages, F. B. Wilcox, Testimony—(part 1).
15 pages,—Calls made for books, papers, etc. in the record by Complainant's of Trust Company.

1047½ pages at 50¢ per page $533.75"

Said bill is attached to Voucher No. 7, dated August 4, 1905, and receipted for for Mr. Jetmore on August 5, 1905.

Guardian Trust Company's Exhibit 14.

Kansas City, Mo. Sept. 8th, 1905.

To H. A. Jetmore,
Shorthand Reporter, Dr.

To Transcript of Testimony in above-entitled cause, on hearing before Hon. Shannon C. Douglass, Special Master,
303 pages,—F. B. Wilcox Testimony

788 146 pages,—Vouchers to E. V. Ingel's Exhibits—(2nd Testimony)
118 pages —Additional Vouchers and Letters, showing Domination.
680 pages —Vouchers covering Johnson's Stock and Bond Statement
304 pages —Minutes of Belt, Consolidated Terminal, etc.
466 pages —Stock Ledgers of Belt, Consolidated Terminal, etc.
541½ pages—Stock Certificates of Belt, etc.
458 pages,—Francis A. Wright's Exhibit '1', '2', '3', '4', '5', '5½' and '6',—two carbon copies.
2 pages —Master's Order for examination of P. & G. Books regarding Central Improvement Company matters.

4 pages —Master's Order for examination of K. C. Southern Ry. Co. books regarding Reorganisation Committee.
11 pages,—Argument by Complainant's Counsel in support of Motion for order to close Defendant's Proofs.
5 pages,—Extracts from Francis A. Wright's Testimony.

3038½ pages at 50¢ per page $1519.25"

Said bill is attached to Voucher 77, dated September 8, 1905, and receipted for by Mr. Jetmore on September 12, 1905.

Guardian Trust Company's Exhibit 15.

"Hearing Before Honorable Shannon C. Douglass, Special Master.

Kansas City, Mo., Oct. 3rd, 1905.

To H. A. Jetmore,
Shorthand Reporter, Dr.

To Transcript of Testimony in above-entitled cause, on hearing before Hon. Shannon C. Douglass, Special Master.
95 pages —Additional Vouchers and Book Entries covering Johnson's Exhibit '844',—Stock and bond statement.
170 pages —Vouchers and Book entries covering Johnson's Exhibit '840'—Bonus, Comm'n & Tr. Fee Statement
40 pages —Additional Vouchers and Book Entries covering Ingel's Statements—(2nd Time)
45 pages —Witness Lane's statement.

350 pages at 50¢ per page $175.00
364 pages —Minutes of Reorganisation Committee (2 carbon copies)—364 pages at 25¢ 91.00

$266.00"

Said bill is attached to Voucher 817, dated October 4, 1905, and receipted for by Mr. Jetmore on October 7, 1905.

Guardian Trust Company's Exhibit 16.

"Hearing Before Honorable Shannon C. Douglass, Special Master.

Kansas City, Mo. Nov. 13th, 1905.

To H. A. Jetmore, Shorthand Reporter, Dr.

1 Large Page —Wright's Exhibit '9'
11 " " Wright's Exhibit '10'

789 (Two carbon copies)
12 pages at 25¢ per page, $3.00 x 2 $ 6.00

48 pages —Testimony of E. S. Swinney.
159 pages —Direct Examination of E. L. Martin
71 pages —Part of Cross examination of Francis A. Wright —9/8-05 & 10/7/05—by Barnett.

278 pages	—(2 carbon copies) 278 at 16-2/3¢ $46.33-1/3 X 2	92.66-2/3
7½ pages	—Book entries covering Ingel's last Exhibit (2nd time) (Part 1, Volume 35, pp. 18453 to 18760, inclusive. (Testimony—George C. Ward, (Testimony H. B. Maynard, (Testimony J. T. January, (Testimony James H. Pickering (only part)	
298 pages	Vouchers and book entries covering 2nd Street Improvement Company Statement of Account, on Trust Company's books.	
1000 pages		
1305½ pages at 50¢ per page		$652.75
	Total	$781.41
21 pages,	Central Improvement Company Stock Certificates.	
21 pages at 50¢ per page		10.50
		$ 781.91"

Said bill is attached to Voucher 101, dated November 13, 1905, and receipted for by Mr. Jetmore on November 17, 1905.

Guardian Trust Company's Exhibit 17.

"The Kansas City Southern Railway Company

To H. A. Jetmore, Dr.
% T. R. Marks, Building.

Dec. 9 For Bill dated Dec. 7, 1905;
Shorthand reporting and copying papers as per bill attached in the Guardian Trust Company Accounting Case $564.00"

Guardian Trust Company's Exhibit 18

"The Kansas City Southern Railway Company,
To H. A. Jetmore, Dr.,
Shorthand Reporter,
Kansas City, Mo.

1905
Dec. 28 For Bill dated Dec. 26th, 1905, Transcript of testimony in case of Guardian Trust Company Accounting on hearing before Hon. Shannon C. Douglass, Special Master.

As per bill atached $ 813.25"

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790 Guardian Trust Company's Exhibit 19.

"The Kansas City Southern Railway Company.
To H. A. Jetmore,
% T. R. Marks.

1906
Jan. 17 For bill dated Jan, 15, 1906, Transcript of testimony in the case of Cambria Steel Co. v. The Kansas, City Suburban Belt Railroad Company, etc.
As per bill attached $ 313.50"

Guardian Trust Company's Exhibit 20.

"Hearing Before Honorable Shannon C. Douglass, Special Master.

Kansas City, Mo. Feb. 12, 1906.

To H. A. Jetmore, Shorthand Reporter, Dr.

Minutes of Old Belt Company. (Defendant's Case)
65 pages (two copies) 65 at 16-2/3c X 2 21.66-2/3
(Statement of Account of K. C. S. B. R. R. Co. Month of
(June, 1898.
(Statement of Account of K. C. S. B. R. R. Co. month of
(October, 1899. (Defendant's case)
132 pages (two copies) 132 at 16-2/3c X 2 44.00
Exhibits offered by Defendant.
7-1/2 pages—(two copies) 7-1/2 at 16-2/3¢ X 2 2.50
122 pages—(122 at 50¢) 61.00
Voucher Record of Central Improvement Company, offered in Defendant's case.
93 pages—(two copies)—93 at 16-2/3¢ X 2 31.00

Transcript of Testimony—Vol. 48—pages
28736 to 29305, both inclusive.

570 pages.

Less Tromanhauser Exhibits, 13 pages, charged for
13 in bill of Aug. 4, 1905.
Release of K. C. S. B. R. R. Co. Mortgage, charged
3½ for in Bill of August 4, 1905/.
Ingels Exhibits and vouchers charged for
263½ pages—in Bill of Aug. 4, 1905.
7½ pages—in Bill of Nov. 13, 1905.
40, pages in in Bill of Oct. 3, 1905.
146 pages in Bill of Sept. 8, 1905.
473½—(These deducted from Vol. 48 and 49)

96-2/3 pages.

Transcript of Testimony—Vol. 49, pages 29306 to 30250,
both inclusive.

945 pages,
10 pages,—Index & Cover—Volume 48.
16 pages —Index & Cover—Volume 49.

1067-2/3

38 pages—Less McCarty Testimony, pages 30198 to 30235, inclusive, charged in Bill of Dec. 26,/05.

1029-2/3 pages.
187-1/3 pages deducted for blank and short pages.

842-1/3 pages at 50¢ per page $421.16-2/3

Total $581.33-1/3"

791 Said bill attached to Voucher 49, dated February 12, 1906, is receipted for by Mr. Jetmore on February 14, 1906.

Guardian Trust Company's Exhibit 21.

"Hearing Before Honorable Shannon C. Douglass, Special Master.

Kansas City, Mo. Feb. 20, 1906.

To H. A. Jetmore, Shorthand Reporter, Dr.

To Transcript of testimony—Vol. 48 and 49.
Hastings Exhibit '43, '44', '45', '46', '47', '48', '51', '52', '70', '71', '72', '74' and '75'.
12½ pages at 50¢ per page $ 6.25
Volume 50,—pages 30251 to 30571, both inclusive.

Defendant's Case.

321 pages.
5 pages—Index and cover.

326 pages.
12 pages off, for short pages

314 pages. Two carbon copies.
314 pages at 16-2/3¢ per page, times 2 104.66-2/3

$110.91-2/3"

Said bill is attached to Voucher 267, dated February 20, 1906, and receipted for by Mr. Jetmore on February 24, 1906.

Guardian Trust Company's Exhibit 22.

"Before Honorable Shannon C. Douglass, Special Master.

Kansas City, Mo. March 9th, 1906.

To H. A. Jetmore, Shorthand Reporter, Dr.

1 page—Johnson Exhibit '855'—entry on K. C. So. Journal No. 2 page 550, page 13647½ of record.
11 pages—Ingels Exhibit '...' last time on stand, regarding amounts paid by K. C. So. Ry. Co. and Reorganization Committee for P & G
81½ pages—Vouchers of Central Improvement Co. and Belt Company, offered in connection with testimony of witness Francis A. Wright

93½ pages,
60 pages,—Correspondence passing between Trust Company and Reorganization Committee—Rebuttal.

153½ pages at 50¢ per page $ 76.75

Volume 51,—pages 30572 to 31227, inclusive.

656 pages
6 pages—Index and cover.

662 pages.
132 pages, Less,—Annual Statements of K. C. S. B. R. R. Co. for month of June, 1898, and October, 1899, paid for in bill of Feb. 12, 1906.

530 pages.
27 pages. Less for short pages, etc.

503 pages.

792 Volume 52,—pages 31228 to 31500, inclusive.
273 pages.
65 pages Less,—Old Belt Company Minutes, paid for in Bill of Feb. 12, 1906.
157½ Pages Less—New Belt Company Minutes,
222½ paid for in Bill of Dec. 7/05

50½ pages
8½ Less

42 42 pages, Minutes of Consolidated Terml. Ry. Co. and cover.

545 pages—two carbon copies—16-2/3¢ X 545 X 2 $181.66-2/3

Total $ 258.42"

Said bill is attached to Voucher 69, dated March 20, 1906, and receipted for by Mr. Jetmore on March 20, 1906.

Guardian Trust Company's Exhibit 23.

"Hearing Before Honorable Shannon C. Douglass, Special Master.

Kansas City, Mo. March 29th, 1906.

To H. A. Jetmore, Shorthand Reporter, Dr.

To Transcript of testimony in above-entitled cause, on hearing before Hon. Shannon C. Douglass, Special Master, Volume 53, —pages 31501 to 32867, both inclusive.

1367 pages
14 pages—Index and Cover

1381 pages.

Less
7½ pages,—paid for in bill of Feb. 12, 1906.
11 pages—Remarks on Motion to Close Defendant's Proofs-paid for in Bill Sept. 8, 1905.
93 pages—Voucher Record of Central Improvement Company, paid for in Bill of Feb. 12, 1906.
289 pages—Francis A. Wright's Testimony taken by Mr. L. Knight, paid for in bill of Jan. 15, 06.
40 pages—Francis A. Wright's Testimony taken by Mr. F. Barnett, —paid for in Bill of Nov. 13., 05.
48 pages—E. S. Swinney's Testimony, taken by Mr. R. Adams, paid for in Bill of Nov. 13, 05.
159 pages—E. L. Martin's Testimony taken by Jetmore and Adams, —paid for Bill Nov. 13, 05.

647½

733½ pages.
38½ pages,—Less for short pages, etc.
Two carbon copies.
695 pages at 16-2/3¢ X 2 $ 231.67"

Said bill is attached to voucher 533, dated March 29, 1906, and receipted for by Mr. Jetmore on March 21, 1906.

Guardian Trust Company's Exhibit 24.

"Hearing Before Honorable Shannon C. Douglass, Special Master.

Kansas City, Mo. April 21st, 1906.

To H. A. Jetmore, Shorthand Reporter, Dr.

To transcript of Testimony in above entitled cause, on hearing before Hon Shannon C. Douglass, Special Master.

793 Volume 54

Volumes 54, 55 and 56—pages 32868 to 34614, inclusive.

563 pages—32868 to 33430, both inclusive.
8 pages—Index and Cover.
2 pages—33322½ and 33322¾

573 pages
Less:
31 pages—Cross examination of Francis A. Wright, (pages 33018 to 33051), paid in Bill of Nov. 13-05.

81 pages—Central Improvement Company Vouchers,—(pages 33325 to 33411) paid for in Bill of Mar. 9, 06.
138½ 26 pages—Discount for short pages, etc.

434½ pages.
21½ pages, Journal Entries in Central Improvements Company's Journal offered in Rebuttal—(pages 33268 to 33288)
21½ pages at 50¢ per page $ 10.75

413 pages
413 pages at 16-2/3¢ X 2 137.66-2/3

$148.41-2/3

Volume 55.

702 pages—33431 to 34132, inclusive.
4 pages—33758½, 5/8, 6/7, and ½.
5 pages—Index and cover

711 pages.
Less:
42½ pages-Willey's Exhibits 95, 98, and 99, commencing at pages 33543, 33558, 33596. These paid for in Bill of Dec. 7,-05.
148-2/3 pages—Letters in Letter Impression Books of K. C. S. B. R. R. Co.—pages 33927 to 34125.
237-2/3 These paid for in Bill of Dec. 7-05/.

473-1/3 pages.
473 ½ pages at 16-2/3¢ X 2 157.77-2/3

$306.19-1/3

Volume 56.

482 pages—34133 to 34614, inclusive.
12 pages—Index and cover

494 pages.
Less:
122 pages of Copied Exhibits—paid for in Bill of Feb. 12/06.
60 pages of Correspondence passing between Reorganization Committee and Guardian Trust Company, paid for in Bill of March 9/06.
223 41 pages, Discount for short pages, etc.

271 pages.
271 pages at 50¢ per page $135.50
1 page,—Wright's Exhibit 'A-12', at 16-2/3¢ X 2 .33-1/3
Franklin Hudson Publishing Company—Binding Master's Copy of Record—56 Volumes—2 large—$36.00.
Complainant's one-half of same. 18.00

Total $460.03"

Said bill is attached to Voucher 294, dated April 25, 1906, and receipted for by Mr. Jetmore on April 27, 1906.

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794 Guardian Trust Company's Exhibit 25.

"Hearing Before Honorable Shannon C. Douglass, Special Master.

Kansas City, Mo. August 20th, 1906.

To H. A. Jetmore, Shorthand Reporter, Dr.

Part 1, Volume 37—pages 34615 to 35401, both inclusive.	
4 pages—Certified copy original petition, Cambria case.	
17 pages—Certified copy report of sale by S. C. Douglass, Special Master, of K. C. Sub. Belt Rld. et al.	
11 pages—Certified copy order confirming report of sale of K. C. Sub. Belt Rld. et al.	
9 pages—Certified copy of Report of sale by S. C. Douglass, Special Master, of Union Terminal Rld.	
5 pages—Certified copy order confirming Report of Sale of Union Terminal Rld.	
11 pages—Certified copy of Agreement between Reorganization Committee and K. C. Southern Rld. Co., Oct. 19, 1900, and exhibits thereto.	
57 pages—Less 2½ pages—54½ (2 carbon copies)	
54½ pages at 16-2/3¢ X 2	$ 18.16
300 pages—Minutes of K. C. Southern Ry. Co.—Stockholders and Directors Meetings, March 20, 1900. (2 carbon copies)—(charge for only one)	
300 pages at 16-2/3¢ per page	50.00
81 pages—Mortgage K. C. Southern Railway Company. (2 copies—but charge for only 18 pages)	
18 pages at 50¢ per page	9.00
23 pages—Supplemental Indenture—Mortgage K. C. Southern Railway Company. (2 copies).	
Less: 1½ pages—21½ pages at 50¢ per page	10.75
200 pages—Testimony in Port Arthur Channel & Dock Company case pages 34954 to 35053, inclusive.	
2 pages—Stipulation filed Feb. 7, 1905—35055-6	
2 pages—Stipulation filed May 1, 1905—35058-9	
28 pages—Stipulation filed July 2, 1906—35061-88.	
232 pages—Less 10 pages—222 pages	
222 pages at 50¢ per page	111.00
Total	$198.91"

Said bill is attached to Voucher 510, dated August 24, 1906, and receipted for by Mr. Jetmore on August 30, 1906.

On Friday, the 13th day of June, 1924, at ten o'clock A. M. at the request of the Kansas City Southern Railway Company and the Cambria Steel Company, the Master reopened the case and the following proceedings were had:

795 Mr. JAMES E. ANDERSON, produced as a witness on behalf of the Kansas City Southern Railway Company and the Cambria Steel Company, first being duly sworn, testified, in substance, as follows:

I originally made a check of the amount paid by the Kansas City Southern to the Guardian Trust Company, in April, 1916, when something like $878,000.00 was paid. Recently, I make a check of the amount of that payment to see whether the total amount to be paid had been correctly figured. I was advised at that time that the Trust Company claimed that we had under-calculated the amount paid to them and that the calculation was inadequate by about $144.35. In April, or some time in 1916, I made a check of the Trust Company's books with reference to an item of $40,001.25 growing out of the sale of certain Northern Connecting bonds that had been sold under the order of court. I found from the books of the Trust Company that interest on that amount of $40,001.25 was received by the Trust Company over a period from November 1, 1901 to October 25, 1902, to the amount of $737.02, and interest from October 25, 1902, to March 20, 1905, in the amount of $3874.47, and from March 20, 1905 to April 15, 1916, in the amount of $17,295.89, making a total of interest actually received of $21,907.38. When the payment was made on April 15, 1916, the amount of interest credited on this item of $40,001.25, was only $17,268.01, whereas the amount of interest actually received by the Trust Company, as stated, was $21,907.38. No interest was received by the Southern Company in excess of $17,268.01. The Southern Company has never been paid anything on account of the item of interest of $737.02 received by the Trust Company on October 25, 1902, and $3874.47 received March 20, 1905.

Mr. Smith: Let the record show, if the Master please, that the Southern Company is now asking the Master to require the Trust Company at this time, and before you, to make a full and complete showing as to what has been done
796 with the collateral in its hands held by it and described in the final decree in this case of June 25, 1910, and that it account to you today and explain to you any income, cash or dividends, that it received out of that collateral, and what disposition it has made of it.

The Master: The Master will not make that order at the present time.

To which ruling of the Master, the Kansas City Southern Railway Company and the Cambria Steel Company duly excepted.

Mr. Smith: I want to offer in evidence, if the Master please, a copy of a letter that was written by Mr. F. H. Moore, to Mr. S. B. Willey, representative of the Guardian Trust Company, March 28, 1917, asking for an agreement as to the figures to go into the final decree in the Guardian Trust Company case. Mr. Bowersock replied to that letter. And another letter of August 16, 1918, in which Mr. Bowersock acknowledges receipt of a form of tentative decree in this case.

Said three letters last above offered in evidence by counsel for the Kansas City Southern Railway Company are here marked by the reporter, Kansas City Southern Railway Company's Exhibits 14, 15 and 16.

Mr. Rosenberger: Those will be objected to as wholly irrelevant to any issue in the case. If received they might call for quite an extensive collateral inquiry as to what Mr. Bowersock did, and other counsel for the Trust Company, in an effort to get this final decree rendered; and also as to the calling of various hearings before the court which resulted in the appointment of the Master. I don't see what they have possibly got to do with this case.

The Master: I can't see that they have any relevancy.

Mr. Smith: I am offering them, if the Master please, on the theory that the question of the claims for interest, claims for prompt disposition of this matter, is evidenced by the fact of Mr. Bowersock's acknowledging letters showing that we tried to do that very thing.

797 The Master: I think we would open up a very large inquiry. That objection will be sustained.

To which last action and ruling of the Master in sustaining said last foregoing objections, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted.

Mr. Smith: I would like to have them copied into the record.

The Master: All right.

Said Southern Railway Company's Exhibits 14, 15 and 16 are in words and figures as follows, to-wit:

Kansas City Southern Railway Company's Exhibit 14.

"March 28, 1917.

File

Mr. S. B. Willey,
301 Fidelity Trust Company Building,
Kansas City, Missouri.

Dear Sir:

Referring to conference with you on January 19th, with a view to agreeing on the amount of the judgment in the suit of the Guardian Trust Company against The Kansas City Southern.

Will you kindly advise whether you have finished checking over the statement which was left with you, and whether you have found it to be correct.

Yours very truly,

Kansas City Southern Railway Company's Exhibit 15.

"Law Offices
Justin D. Bowersock,
Fidelity Trust Building.

G. T. Aughinbaugh
Robert B. Fizzell

Kansas City, Mo. April 5, 1917.
(File No. .....)

Mr. S. W. Moore,
General Solicitor, K. C. S. Ry. Co.,
Kansas City, Missouri.

(Received Apr. 7, 1917.)
(Legal Department)
(The Kansas City Sou. Ry. Co.)

Dear Sir:

Your favor of March 28th addressed to Mr. Willey has been referred to me for reply. The Receiver's office has been so busy with other matters that your statement relative
798 to the judgment in favor of the Guardian Trust Company against the Kansas City Southern Railway Company has not had attention. I will see that this matter is taken up at once and disposed of.

Very truly yours,

JUSTIN D. BOWERSOCK,
Attorney for Receiver."

JDB-G

Kansas City Southern Railway Company's Exhibit 16.

"Law Offices
Justin D. Bowersock
Fidelity Trust Building.

G. T. Aughinbaugh
Robert B. Fizzell Kansas City, Mo. August 16, 1918.

Mr. S. W. Moore,
General Solicitor, K. C. Southern Ry. Co.,
Kansas City, Missouri.

Dear Sir:

I have received your letter of July 28, enclosing tentative draft of decree in the Kansas City Southern-Guardian Trust Company litigation. My duties with the District Board have prevented my getting to this as promptly as I should have liked, and I am now leaving the city for two weeks' absence. I will take the matter up with you immediately on my return, and endeavor to dispose of it finally.

Very truly yours,

JDB-LJ JUSTIN D. BOWERSOCK."

Mr. Rosenberger: I offer in evidence all of the court files in Equity case No. 2483, entitled Bierce and others against the Guardian Trust Company.

Mr. Smith: I object to that, if your Honor please, as grossly unfair and improper way to get the matter into this case. It requires the inclusion of a huge amount of documents that probably have no bearing on this case at all and to make the offer is not only improper, but going into something here at the last moment after we have had a great argument of this matter that we know nothing about or
799 have had no opportunity to see these individual documents in the evidence offered.

Mr. Rosenberger: Counsel is in error about a great mass of material going into any record. Only that will be in the record, the Master's record, which counsel have expressly asked to be copied, and request is here made by us that we not copy, but insert merely by call. It will not be a part of any record on appeal unless brought in by praecipe; any party may bring any portion of the matter into the record by praecipe. Furthermore, the party doing that will be subject

to all of the penalties for doing that, both by way of costs and otherwise. But I want this record available on appeal.

The Master: What is the purpose of it?

Mr. Rosenberger: The purpose is as bearing on the claim here for interest on the item which has been refered to in the testimony offered by the witness Anderson.

The objection to such offer was, by the Master, sustained, to which ruling the Guardian Trust Company duly excepted.

Mr. Rosenberger: I next offer in evidence the printed record on appeal, No. 4859, filed in the United States Circuit Court of Appeals, in the case of E. A. Shedd, et al., vs. Guardian Trust Company, et al, consisting of three printed volumes, and the opinion of the Court of Appeals in said cause, reported in 240 Fed. 689.

Mr. Smith: I object to that offer, if your Honor please, for the same reasons as were given before and state in support of that objection, that the Southern Company was not a party to the Shedd case and counsel who are now representing the Southern Company on this hearing I think I can say—certainly for myself and I think I can say it for the others—have no knowledge of the case at all; never were parties to it and the only knowledge they have of it is as it has been referred to on this hearing and as they have gotten it from newspaper accounts possibly in the past. As for myself, I didn't know about the Shedd case until I got into this
800 matter here.

The Master: The objection will be sustained.

To which last action and ruling of the Master, in sustaining the foregoing objections, the Guardian Trust Company, by its counsel, at the time duly excepted.

Mr. Rosenberger: I next offer in evidence, as Exhibit 6, appellant's abstract of the record in the case of H. S. Mecartney vs. Guardian Trust Company, on appeal to the Supreme Court of Missouri, and on file in said court.

Mr. Smith: I object to that offer for the reason that on the hearing of this case before your Honor on the issue of costs, counsel on both sides, offered parts of the record in the Mecartney case, including all parts that were deemed by counsel to have any material bearing on the issues herein involved; that this present offer in this omnibus form is unfair, improper and putting into the case a huge mass of record—that

record containing 1447 pages, each page containing a great deal more than the ordinary page of printed record; that no showing is made as to how this record could have any bearing upon the issues now under consideration; and for the reason that it is improper to offer it at this time and improper to offer it at all in such a huge, unreasonable form.

The Master: I understand you don't expect the reporter to copy it at all?

Mr. Rosenberger: No; it will be copied merely as called for.

The Master: The objection is overruled.

Mr. Smith: If the Master please, when you make up this record how are you going to get that into the record?

The Master: The notes of the reporter will show a call for it. That makes it accessible to every party in the case.

Mr. Smith: If the Master please, I further object to it because of the very proposition that your Honor has
801 ruled that you are not going into the Mecartney case and you are now putting into this record by this ruling all of the facts in that case and making an issue now by which Mr. Rosenberger can contend in the Appellate Court that the evidence has been examined by you and that you have found on the evidence in this Mecartney case that the judgment in his favor was a correct amount, when your Honor has said you are not going to do that. I object for the further reason that so far as it goes to the merits of the Mecartney case, it was evidence taken in a proceeding in which we were not parties and we have had no opportunity to appear and cross-examine those witnesses; and it puts it in a form by which counsel can make the contention that you have heard the evidence, or seen the evidence, in the Mecartney case and presumptively you have concurred in the decision in that case. It makes it improper and grossly unfair to us, not giving us a proper hearing according to the rules of equity; no reason has been stated here for making the offer of this transcript or what bearing it has upon any question involved in the case.

The Master: I will admit the Mecartney case record with the explanation that the reporter is not to copy it except as called for.

To which ruling of the Master, the Kansas City Southern Railway Company and the Cambria Steel Company duly excepted.

802 Mr. Smith: Just a moment: On this ruling of your Honor now made I ask that the Master re-open this Mecartney case and let us re-try that case in a proceeding in which we will have the opportunity to cross-examine the witnesses.

The Master: The Master is not going to try the Mecartney case and does not, as a matter of fact, intend to read the entire Mecartney record.

Mr. Smith: Just a moment, if the Master please: I have already stated in this record I think the Master is trying most scrupulously to be absolutely fair in this case, but I think the ruling the Master has just made is made inadvisedly. I think when you say you are not going to read the entire record that that does not give any protection to us in the case, because it cannot be told what you have read. I think if your Honor is going to overrule this motion—and I think you shouldn't, of course—I think your Honor ought to say—if you read any part of that record—ought to specify in your report what part you read, because there is no way, other than that, by which it can be told what you have examined, unless you do that. We are going up there to the other court on a hearing and there is no other way in the world by which we can determine what you have read.

The Master: I certainly want to be fair with you.

Mr. Smith: I know you do. I know you do.

The Master: The Master is somewhat disappointed at Mr. Rosenberger's offer at this time.

Mr. Rosenberger: How is that?

The Master: I am very sorry that out of abundance of precaution you have seen fit to bring this whole thing in again.

803 Mr. Rosenberger: The Master has ruled on that no less than three times, now shall we go forward with the evidence or continue the argument?

The Master: Go forward.

H. B. LEAVENS recalled as a witness on the part of the Guardian Trust Company, testified in substance as follows:

I have brought with me the original promissory notes enumerated and described in Paragraph 4 of the final decree in

the Cambria case entered in June, 1910. Page 1051 of the printed record on appeal, No. 3489 and 3490, in the United States Supreme Court of Appeals. I have compared the original notes with the description of them as set forth in Paragraph 4 of that decree and have checked them as regards their dates and amounts, rate of interest, and the credits endorsed on the notes.

Mr. Rosenberger: I call your attention to the following description of one of those notes as it appears in Para-
804 graph IV of said decree, to-wit: "One note dated October 23, 1899, due on demand for $7182.40, with interest at six per cent per annum from date, which with interest at this date amounts to $11,748.70." Is that note correctly described in that decree?

Mr. Smith: Just a moment: I object to that question and any evidence along that line, for the reason that this case has gone to final judgment or this issue was tried before Judge Douglass and Judge Douglass made a finding with reference to the amount due on the note herein described and made report of the same; no exception was taken to the Master's report in reference to that note. The case went to final decree and the amount found due on that note was ascertained in that decree; no assignment was based upon such finding of the Circuit Court, the case proceeded to the Court of Appeals and the judgment of the Court of Appeals fixed and determined the amount that was to be paid in that case on those notes the Southern Company was held to owe, and I object to any evidence with reference to that note, for the reason that it is now too late for the Trust Company to undertake to make any change with reference to that judgment or the notes described in that judgment or amount to be paid thereunder, including this note that is the subject of the present inquiry.

The Master: Whatever my view will be as to the right of the Trust Company to re-open the question of the interest figured on that note, I will admit the evidence. The objection is overruled.

To which last action and ruling of the Master, the Kansas City Southern Railway Company and Cambria Steel Company, by their counsel, at the time duly excepted, and still except.

Mr. Leavens: It is not.

Mr. Rosenberger: In what respect is it inaccurately described in the former decree referred to?

Mr. Leavens: The note bears eight per cent intrest
805 and not six per cent as in that record. I have made a mathematical computation of the amount due under the decree of June, 1910. I segregated all of the various amounts, some of which bear 6% interest, some 7% and some 8% and computed the interest on all of those notes and figured the interest on the totals at those various rates up to April 15, 1916. The total, principal and interest, is $882,634.46. For convenience, I have numbered those notes 1 to 8, in the order of the date of the notes. Note No. 1, at six per cent, $65,848.67; Note No. 2, at six per cent, $327,423.90; Note No. 6, $38,225.00; Note No. 8: six per cent, $16,664.26. The total of those four notes at six per cent, $448,161.83; added to that amount, the amount of that account referred to in the decree which is to bear six per cent and referred to by the Court as $50,412.62, making a grand total of $498,574.45. And I deducted from that amount a credit referred to in the decree of $36,599.56, which left an amount, $461,974.89 as the amount of the judgments bearing six per cent interest. That amount at six per cent interest to April 15, 1916, or rather the interest on that amount at six per cent to April 15, 1916, is $160,918.82. So much for the six per cent. Now for the eight per cent items: I took note No. 3, judgment on which was $42,905.50; note No. 4, that is the note over which the original interest is in dispute, and I made the amount of that note $13,276.91. Note No. 5, $70,715.87; note No. 7, $5748.14; those four bearing eight per cent interest total $132,646.42 and eight per cent interest on that amount from June 25, 1910, to April 15, 1916, is $61,605.14. The one amount bearing seven per cent interest [if] $46,565.76 in the decree and seven per cent interest on that amount from June 15, 1910, to April 15, 1916, $18,923.43; and those three items of interest total $241,447.39. That amount added to the total of the judgments on which they were figured makes $882,634.46 that I mentioned.

Mr. Rosenberger: Now that computation carries you to April 15, 1916, does it not?

Mr. Leavens: Yes, sir.

806 Mr. Rosenberger: How much has been paid to the Guardian Trust Company by its receiver on account of that decree?

Mr. Leavens: There was paid April 15, 1916, in money, $821,623.28.

Mr. Rosenberger: How was that amount arrived at?

Mr. Leavens: I do not know.

Mr. Leavens: I have stated that there was paid to the Guardian Trust Company, on April 15, 1916, $821,623.28. I find on the books of the Trust Company under that date a new account headed "Kansas City Southern Railway Judgment" and this amount is credited to that account. This is the only record I find on the books of the Trust Company of this payment. There is no other credit to that account on that date or any other date. I have made an examination of the books of the Guardian Trust Company for the purpose of ascertaining how the Trust Company or its Receiver handled and disposed of a certain fund of $40,001.25.

At the time that fund was established through the sale of certain securities, the Guardian Trust Company was in receivership, Judge Black was receiver. The receiver opened a separate set of books as receiver. That same set of books was carried through, continued in Wash Adams' receivership. Under date of November 1, 1901 on the books of Judge Black, receiver, there is a credit on bills receivable account of Suburban Belt notes, $38,238.75; and there is a credit the same date to an account named "Open Accounts"—whatever that is—on account of Suburban Belt, note $17,062.50. And I will explain right here that the $38,238.75 came from the asle of certain bonds and the $1762.50 came from the sale of coupons of the same company.

Mr. Rosenberger: Pardon me, Mr. Leavens, you said seventeeen thousand, did you mean seventeen hundred?

Mr. Leavens: $1762.50. Those two amounts—

Mr. Rosenberger: (Interrupting) Wait a minute: making a total of how much?

807 Mr. Leavens: $40,001.25. On that date that amount was deposited in the Union National Bank, or rather it was deposited in the Union National Bank. I am not quite sure whether certificates of deposit were issued or not. I think it was a straight deposit charged to an account headed "Union National Bank". That account of the Union National Bank was charged from time to time with interest. I think monthly charges were made of interest. I haven't got those in detail. And that continued right through the Wash Adams' receivership, which ended October 25, 1902. And on that date a check was made to the Guardian Trust Company by the receiver closing that account. That check was $40,752.45 and the difference between that and the original $40,-

001.25 was $751.20 and that $751.00—no; that is the amount that was received by the Trust Company at that time. Now at that time, when the property of the Trust Company came back to the Trust Company from that receiver, Wash Adams, a new set of books was opened up. The handwriting in the new book is Mr. Willey's. And in the setting up of those books these amounts are taken into account and on the same date, Otcober 25, 1902, a certificate of deposit was taken out, was issued by the Bank of Commerce, for $40,801.27. Now that $800.02, which was added in that certificate of deposit, added to the original $40,001.25, was the interest for six months at four per cent on that deposit. They added the interest of those C. D.'s in advance. When they would issue a C. D. they would issue it for the total amount of the fund with interest six months in advance added—that was the practice in those days. At the end of six months the certificate of deposit was surrendered and a new one issued for the larger amount, which included interest on the whole business for another six months, interest on the original $40,000.00 and the interest compounded. That ran along for a time or two, but under date of November 19, 1903, the practice was changed and one certificate of deposit was issued for the original amount, $40,001.25, and another, a separate certificate, issued for the accumulated interest up to that
808 time. And thereafter for a time the certificates of deposit were renewed from time to time for that amount. Under date of March 20, 1905, the old certificate was cancelled and a new one issued for $40,001.25, but the other C. D. which then amounted to $3874.47, was surrendered and that amount went into the cash of the Guardian Trust Company. No dispute about that amount. Thereafter at six months periods, the C. D. for $40,001.25 was re-issued and on March 20, 1905, a C. D. for $800.02 was issued. That was interest on the $40,000.00 fund for six months at four per cent and each six months that interest—C. D. if you want to call it that—was re-issued and interest for the succeeding six months on both the original $40,000.00 and interest C. D. was added to it and that was continued clear down to April 3, 1917, when both the C. D.'s were surrendered and cancelled and the total of the interest C. D. at that time was $18,968.46 and that added to the $40,001.25 made $58,969.71 and on that date that amount was deposited as cash to the credit of the Guardian Trust Company.

Mr. Smith: Just a moment, Mr. Leavens, let me interrupt: that was in 1917?

Mr. Leavens: And, as I started to say, took the fund clear past this date of April 15, 1916, when you paid that amount. Now going back to April 15, 1916—

Mr. Smith: (Interrupting) 1916?

Mr. Leavens: April 15, 1916, the next C. D.—if I may call it that—that was due April 3, 1916, was $17,235.22 and computing the interest on that amount and on the $40,000.00 item to April 15, 1916, which was $57.24—oh, I don't know what that total was, but added to $40,001.25 made the total amount at that date $57,293.71. Mr. Anderson and I agree on that amount, with the exception that the Southern didn't seem to get on their books this $751.20 at that exact amount, but about twelve, fourteen dollars less than that amount. That accounts for the difference between his figures and mine on the whole business.

809 The fund of $40,001.25 was, from November 1, 1901 to April 15, 1916, at all times held separate and apart from other funds and was, at all times, put out on interest or carried in the form of certificates of deposit which bore interest. $17,292.46 represents all the interest accruing and earned on the fund from March 20, 1905 to April 15, 1916. On two occasions prior to March 20, 1905, the Trust Company having received interest on that fund of Forty Thousand odd dollars, placed that interest in its general fund, the first occasion being on October 25, 1902 and the second occasion being on March 20, 1905. On the latter date, $3,874.47, being the interest which had accrued between October 25, 1902 and March 20, 1905, was placed in its general fund. On October 25, 1902, the amount of interest accrued and placed in its general fund, is shown by the books of the Trust Company to be $751.20. There is an error in that amount. Mr. Anderson and I have agreed that the correct amount is $737.02, so that if, on April 15, 1916, the Guardian Trust Company had allowed under the decree of June 25, 1910, all of the interest which had actually been received by the Trust Company on the $40,000.00 fund, it would have allowed the Southern Company by way of interest, over and above the sum of $17,289.89, the sum of $4611.49, being the totals of $3874.47 and $737.02. The Trust Company did not, to my knowledge, earn any interest on said amount so placed in its general fund. I have not seen nor found no evidence of anything of the sort.

On cross-examination by Mr. Smith, Mr. Leavens testified, in substance, as follows:

Those two items of $737.02 and $3874.47 went into the cash of the Trust Company, into its general account, and so far as I know, was spent for its own purposes, the same as any other money it had. My figures as to the amount of interest earned from March 20, 1905, to April 15, 1916, are $17,292.46. The Kansas City Southern voucher was figured at $17268.01.

810 Mr. Rosenberger: As bearing upon the contention now made by the Kansas City Southern Railway Company, as to interest on the items of interest from the forty thousand odd dollar fund, amounting respectively, to $737.02 and $3874.47, we renew our offer to put in evidence the files of the court in the case of Bierce vs. Guardian Trust Company.

Those files will show that on complaint of Bierce in November, 1900, acting through the same attorneys as those who brought this Cambria suit, a receiver was appointed in November, 1900, for the Guardian Trust Company. They will show the extent of the liquidation of the Guardian Trust Company by that receiver. Those files will further show that upon discharge of that receiver in 1902 the Trust Company was ordered to continue the liquidation and to make no distributions to its stockholders without application to and order of the court. Those files will further show reports of the receiver made at three months intervvals during the entire period from the time the assets were turned back to the Trust Company in 1902 until Mr. Flower was appointed receiver in August of 1916. They will will show that no dividends were paid and the property was practically in custodia legis all of that time; and those files will further show the order made by Judge Thayer touching the sale of the collateral here in question and the realization of the fund of $40,001.25; will show the instructions of Judge Thayer with respect to holding of that fund. Now those matters are clearly relevant to this controversy, if the Master please, and I don't quite understand on what theory they are excluded.

The Master: I wonder whether it wouldn't be possible to expedite and shorten this up. Do you say those statements are correct?

The Smith: I certainly won't. Mr. Rosenberger has answered it himself. He says thereafter quarterly statements about the financial transactions of this company were made which show beyond any question, this company was doing business; matter of fact in liquidation, but doing business. The evidence offered here shows immediately after

the discharge of the receiver fixed salaries of $6,000.00
811 a year for the president and vice-president, and $3,-
000.00 a year for the secretary were paid. And you
speak of this as a defunct organization, that was in custodia
legis. The evidence already heard in this case necessarily
excludes that. In addition to that, if he wants to prove the
condition of things, let him get somebody who is familiar
with it and prove those conditions, on proper notice to us so
we can meet that evidence. And, secondly, if there is any or-
der Judge Thayler made, let him introduce that and if it is
not contrary to the order of the Court of Appeals, let that go
in the evidence. But to say that because he contends that
this company was in liquidation and, therefore, should not
pay interest that, for that reason, the original petition asking
for the appointment of a receiver and all of the orders made
in that case are competent evidence, is a perfect absurdity.
He isn't undertaking to get the proof, but shoveling in this
complete record.

The foregoing offer of evidence was, by the Master, denied and said files excluded, to which ruling of the Master, the Guardian Trust Company duly excepted.

The following statement was produced by the witness Leavens after he left the stand and by agreement of counsel, is made part of his testimony, the same being marked Guardian Trust Company's Exhibit 7, and is is words and figures as follows, to-wit:

Guardian Trust Company's Exhibit 7.

"Securities held by the Guardian Trust Company as collateral for the payment of notes of the Kansas City Suburban Belt Railway Company: 67 & 900/1000 K. C. & N. C. R. R. Second Mortgage Bonds.

25 Shares Fairmount Improvement Company.

1120 shares Central Improvement Company.

$15,000.00 K. C. & N. C. R. R. Company Second Mortgage Bonds.

812 425 Shares Missouri Elevator and Terminal Co.

439 Shares Northern Townsite Company.

June 14, 1924.

(Signed) H. B. LEAVENS.

Northern Townsite Company

Stockholders:

Guardian Trust Company	537 shares	
Kansas City Sub. Belt R. R. Co.	439 shares	
A. E. Stilwell	24 shares	
	1000	
Cash in Fidelity National Bank & Trust Company, August 31, 1920		$ 231.87
Cash in First National Bank		18,497.34
		$18,729.21
Liquidation Dividend $18.00 per share.		
Paid August 17th, 1920—Guardian Trust Co.	$ 9,666.00	
Paid Sept. 7, 1920—A. E. Stilwell	432.00	
		10,098.00
		$ 8,631.21
$18.00 per share on 439 shares		7,902.00
		$ 739.21
Jan. 24, 1921 Paid Mo. State Treas.	$252.25	
Oct. 25, 1921 Paid Collector Taxes Jackson Co.	229.40	
Jan. 17, 1922 Paid Collector Internal Revenue	10.00	
		491.65
		$ 237.56
Share Guardian Trust Company	$127.57	
Share K. C. Sub. Belt R. R. Co.	104.29	
Share A. E. Stilwell	5.70	
	$237.56	
Proportion for distribution of interest accumulated.		
Guardian Trust Company	$127.54	
K. C. Sub. Belt R. R. Co.	8,006.29	
A. E. Stilwell	5.70	
	$8,139.53	
Total cash on hand June 13th, 1924,	$9,114.26	

Interest is received monthly."

JAMES E. ANDERSON, recalled as a witness on behalf of the Kansas City Southern Railway Company and the Cambria Steel Company, testified, in substance, as follows:

I have figured the interest on those amounts of $737.02 and $3874.47 from October 25, 1902 and March 20, 1905, respect-

ively, first at straight 6% up until April 5, 1916, and
813 then during the same period at 8%, and then at 6% compounded on June 25, 1910, and then at 8% compounded on the same date. Six percent on $737.02, from October 25, 1902 to April 15, 1916, is $595.96. Straight 6% interest on $3874.47 from March 20, 1905 to April 15, 1916, is $2574.35. 8% interest on $737.02 from October 25, 1902 to April 15, 1916, is $794.61. 8% interest on $3874.47 from March 20, 1905 to April 15, 1916, is $3432.43. Interest at 6% on $737.02 from October 25, 1902 to June 25, 1910, and compounded from that date to April 15, 1916, including principal, is $1467.23. Interest at 6% on $3874.47 from March 20, 1905 to June 25, 1910, compounded at that rate to April 15, 1916, is $3747.30. No, I seem to be mixed up.

Mr. Rosenberger: It might be more satisfactory for Mr. Anderson to get up a tabulation as to this interest.

Mr. Smith: Mr. Rosenberger has suggested that you make a tabulation on a sheet and cover this matter. That is satisfactory to us and the Master. While we are on that, I want to ask in this connection, if you made a calculation of the interest on the note for $7162.40 at 6% without compounding, at 8% without compounding and at 6% and 8% with compounding at June 25, 1910?

Mr. Anderson: Yes, I made those calculations.

Mr. Smith: Now will you put on the same paper, the result of that calculation and make it a part of the same exhibit?

Mr. Anderson: Yes, sir.

Thereupon the Guardian Trust Company rested its case and the Kansas City Southern Railway Company and the Cambria Steel Company rested their case.

(Approval of Condensed Statement of Testimony by District Judge and Counsel.)

The above and foregoing is hereby approved as a true, complete and properly prepared, Condensed Statement
814 of all the material testimony taken in the above entitled cause before Special Master Henry D. Ashley, and it is ordered that said statement be filed herein and made a part of the record in this cause for the purposes of

the appeal heretofore allowed to the United States Circuit Court of Appeals for the Eighth Circuit.

ARBA S. VAN VALKENBURGH
Judge.

JUSTIN D. BOWERSOCK
Attorney for Henry C. Flower, Receiver.

Feb. 25, 1927.

Approved:
F. H. Moore
Cyrus Crane
A. F. Smith
Attorneys for Kansas City Southern Railway Company and R. E. Ball by A. F. Smith Atty for Cambria Steel Company.

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815 (Order, February 28, 1927, further extending time to file Transcript.)

In the District Court of the United States for the Western Division of the Western District of Missouri

Cambria Steel Company, Complainant,
vs.
Kansas City Suburban Belt Railroad Company, et al., Defendants.

Bill In Equity.

Edward F. Swinney, as Receiver, Complainant,
No. 2468 vs.
Cambria Steel Company, et al., Defendants.

Ancillary Bill

The Kansas City Southern Railway Company, Complainant,
vs.
Guardian Trust Company, et al., Defendants.

Intervening Petition.

For good cause shown, it is ordered that appellant shall have until on or before the 31st day of March, 1927, to file its transcript of the record in the above entitled cause.

ARBA S. VAN VALKENBURGH
Judge.

Dated this 26th day of February, 1927.

Filed in the United States District Court, February 28, 1927.

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816 Memorandum Upon Motion For Entry of Final Decree

In the District Court of the United States for the Western Division of the Western District of Missouri

Cambria Steel Company, Complainant,

vs.

Kansas City Suburban Belt Railroad Company, The Union Terminal Railroad Company, Kansas City Independence Air Line, Guardian Trust Company, Missouri Elevator & Terminal Company, Central Improvement Company, Second Street Improvement Company, Fairmount Amusement Company, and Northern Townsite Company, Defendants.

Bill In Equity

Edward F. Swinney, as Receivers of the Kansas City Suburban Belt Railroad Company, and Kansas City Suburban Belt Company, Complainants,

No. 2468 vs.

Cambria Steel Company, Guardian Trust Company, Missouri Elevator & Terminal Company, Central Improvement Company and T. T. Crittenden, its Receiver, Northern Townsite Company, and Fairmount Amusement Company, Defendants.

Ancillary Bill

The Kansas City Southern Railway Company, Complainant,

vs.

Guardian Trust Company, Kansas City Suburban Belt Railroad Company and Edward F. Swinney, as Receiver of the Kansas City Suburban Belt Railroad Company, Central Improvement Company and T. T. Crittenden, its Receiver, Cambria Steel Company, Northern Townsite Company and its Receiver, Fairmount Amusement Company, and Missouri Elevator & Terminal Company, Defendants.

Intervening Petition

817 This matter comes up upon application of the Guardian Trust Company, and its Receiver, for the entering of a final decree in the above entitled cause in accordance with the directions given to this court by decree of the United States Circuit Court of Appeals for the Eighth Circuit pur-

suant to the opinion filed by said Court of Appeals December 2nd, 1913, and in accordance with the mandate of the Supreme Court of the United States affirming said decree. Said proposed decree, as an incident thereto, carries with it the very important incident of the taxing of costs; a matter which involves some serious considerations, undoubtedly the most serious of any involved in the final adjustment of this litigation. The judgment of the Circuit Court of Appeals was in favor of the Guardian Trust Company, and parties who must be decreed to pay such costs, as may be duly adjudged against them are the Kansas City Southern Railway Company, hereinafter called the Southern Company, and the Cambria Steel Company, hereinafter called the Cambria Company. While the Kansas City Suburban Belt Railroad Company, hereinafter called the Belt Company, through the ancillary bill filed by its receiver is in-
818 volved in like manner, nevertheless the obligations of that company, through ownership, are merged in those of the Southern Company for all the practical purposes of the questions now before us.

The Trust Company prays that the costs be taxed as between solicitor and client. The Southern Company insists that they be limited to such as are taxable between party and party. This is the substantial controversy presented to the court in this application.

In addition to the application of the Trust Company, and its receivers, a stockholder and representatives of a deceased stockholder have filed in this case a supplemental petition directed to the same end. The Southern Company moves that this supplemental petition should be dismissed under Equity rule 27, and because no ground for the intervention of stockholders is disclosed. These same stockholders were permitted to be heard in the Circuit Court of Appeals upon the ground asserted and entertained that the then counsel for the company were failing to assert against the Southern Company certain rights of recovery which were alleged and found to subsist. With respect to the issue now before us the receiver and his counsel have always recognized, and are now asserting, the taxation of costs of the nature
819 claimed in the supplemental petition of the minority stockholders. The delay in entering the decree and taxing costs has been due to a number of substantial causes; among them, the fact that substantially all of the money judgment involved in the decree has been paid; that receiver and counsel have been engaged in matters of administration of the estate and in the prosecution and defense of litigation,

some of it but recently determined, which has a potential bearing upon the issue here involved, and that the business of this court, for some time past, has been so congested that delays of this nature have been unavoidable. It has been at all times in the mind of receiver and counsel to press for the allowances here claimed. In this state of fact no necessity appears for stockholders to intervene in the prosecution of this motion, nor can the legal standing of their bill be sustained if challenged. The motion of the Southern Company that the supplemental bill of these stockholders be dismissed is accordingly sustained.

The right to tax costs as between solicitor and client depends upon one, or both, of two theories recognized in the law.

820 First. Where gross charges of fraud and misconduct have been made and not sustained, and where the main ground of the suit is shown to be false, unjust, vexatious, wanton or oppressive. In other words, where charges amounting to scandal and a misuse of the courts are made and not sustained, but found to be baseless and unwarrantable.

Second. Where a fiduciary relation exists between the parties, such as trustee and cestui que trust, or pledgor and pledgee, or principal and agent, and where the fiduciary is put to expense in the defense of an unfounded suit brought against him by such cestiu que trust, or pledgor or principal, especially where charges of gross fraud and misconduct have been made against a fiduciary and have been found baseless and unwarrantable.

The Southern Company contends that the right to tax costs, as between solicitor and client, does not exist in this country under the rule established by its courts in cases falling under class one, supra; and it further contends that the fiduciary relation essential to class two does not exist in the case at Bar, and that, in any event, a fund must be presented out of which such allowances may be paid, and that
821 there was no such fund to which such allowances, if made, could attach.

With respect to claim one, counsel for the receiver freely recognize the serious consideration which should be given to the utterance of the Supreme Court in Oelrichs vs. Spain, 15 Wall. 211, wherein it was said:

"In debt, covenant, and assumpsit, damages are recovered, but counsel fees are never included. So in equity cases,

where there is no injunction bond, only the taxable costs are allowed to the complainants. The same rule is applied to the defendant, however unjust the litigation on the other side, and however large the expensa litis to which he may have been subjected. The parties in this respect are upon a footing of equality. There is no fixed standard by which the honorarium can be measured. Some counsel demand much more than others. Some clients are willing to pay more than others. More counsel may be employed than are necessary. When both counsel and client know that the fees are to be paid by the other party there is danger of abuse. A reference to a master, or an issue to a jury, might be necessary to ascertain the proper amount, and this grafted litigation might possibly be more animated and protracted than that in the original cause. It would be an office of some delicacy on the part of the court to scale down the charges, as might sometimes be necessary.

We think the principle of disallowance rests on a solid foundation, and that the opposite rule is forbidden by the analogies of the law and sound public policy".

In that case the point under consideration was whether counsel fees paid in attending to an injunction were recoverable on the injunction bonds. The court held to the contrary, and in so doing make the general declaration above quoted. In that case the question here involved was not in issue. It does not appear that the litigation was re-
822 garded as baseless, unwarranted or oppressive. Ordinarily, as we know, utterances of a court are construed with reference to the nature of the case before it when the pronouncement is made. Anything beyond that is dictum; nevertheless, any sweeping statement of this nature by the Supreme Court of the United States may, and generally does, indicate an intimation of the policy to which that court inclines. This case has been so generally accepted in cases in equity strictly between party and party.

(Tullock vs. Mulvane, 184 U. S. 497; Missouri, Kansas & Texas R'y. Co. vs. Elliott, 184 U. S. 530; Gilbert vs. American Surety Co., (C. C. A.) 121 Fed. 499)

But in all such cases the issue was almost precisely the same as in Oelrichs vs. Spain, supra, and the consideration here presented was neither present nor discussed.

Much doubt is cast upon the intended scope of the quoted language in Oelrichs vs. Spain by other declarations of the Supreme Court which have not been thought to be in conflict therewith.

In State of Pennsylvania vs. The Wheeling & Belmont Bridge Co., 18 Howard 460, the court said:

"In the character of the suits in this court of original jurisdiction, we perceive nothing that should lead us
823 to distinguish, on the question of costs, between this court and the circuit courts. * * *

Original jurisdiction in equity, in a particular class of cases, conferred by the constitution on this court, has been interpreted to impose the duty to adjudicate according to such rules and principles as governed the action of the court of chancery in England, which administered equity at the time of the emigration of our ancestors, and down to the period when our constitution was formed".

In the United States vs. Waters, 133 U. S. 208-212, the court said:

"Both before and since the enactment of the statute of 1853, courts in the exercise of their discretion have allowed counsel fees in many cases without question when reviewed by this court".

Now, under the chancery practice of England, referred to by Mr. Justice Nelson in Pennsylvania vs. Bridge Company, there can be no doubt that costs, as between solicitor and client, are allowed in cases of the nature embraced within class one, supra. In Turner vs. Collins, Law Reports, Equity Cases, Vol. 12, it was held:

"The court will direct costs to be taxed as between solicitor and client where a fiduciary relation exists between the parties or where there is something in the nature of scandal, as where gross charges of fraud have been made and not sustained; and the court may direct an unsuccessful party to pay the costs of a trustee as between solicitor and client whether there is or not any fund out of which they may be paid".

This is and was at the period specified by Mr. Justice Nelson, the established rule in the English Chancery courts, and my attention has been directed to no statute which
824 necessarily, or even plausibly, limits the discretion lodged in the equity courts of the United States.

In Cuyler vs. Atlantic & N. C. R. Co., 132 Fed. 570, it is held that section 823 Revised Statutes does not regulate allowances by courts of equity for counsel fees to the complainant, for the court to make such allowances has been recogniz-

ed as a general power of a court of equity. It is true that this case involved a situation other than that here presented under this phase of the discussion; nevertheless, it did further recognize that statutes imposing restrictions upon fees have not been generally understood as limiting the discretionary powers of courts of equity. The rule prevailing in state jurisdictions is not controlling.

"Where contract rights are settled by the law of the state, that law does not determine the procedure of courts of the United States sitting as courts of equity, or the costs which are taxable there, or control the discretion exercised in matters of allowances. Those courts acquire their jurisdiction and powers from another source than the state".

(Dodge vs. Tulleys, 144 U. S. 451-457)

It would seem that the power of a national court of equity to tax costs and expenses as between solicitor and client, in cases falling under class one, as above stated, should not be considered as foreclosed, but, on the contrary, that some express decision of the Supreme Court in a case involving essential facts is greatly to be desired.

On the second point, to-wit, where a fiduciary relation exists between the parties, as defined in class two, the decisions are not in substantial conflict. The rule is well stated in Trustees vs. Greenough, 105 U. S. 527, wherein it is said:

"One jointly interested with others in a common fund, who, in good faith, maintains the necessary litigation to save it from waste and secure its proper application, is entitled in equity to the reimbursement of his costs as between solicitor and client, either out of the fund itself, or by proportionate contributions from those who receive the benefit of the litigation".

And it is further said:

"Of course, it is well understood that costs as between solicitor and client include all reasonable expenses and counsel fees, and are not like costs as between party and party, confined to the taxed costs allowed by the fee-bill".

Attention is called to the common practice that has prevailed in this respect in the vast amount of litigation which has arisen in this country upon railroad mortgages, and the doctrine is restated that allowances of this kind "if made with moderation and a jealous regard to the rights of those who

are interested in the fund, are not only admissible, but agreeable to the principles of equity and justice". While the prevailing party in this case was not strictly a trustee,
826 but rather a creditor interested in a common fund, it was adjudged that he had at least acted the part of a trustee in relation to the common interest, and that this was sufficient to entitle him to enlarge costs and allowances.

"Upon an accounting against a trustee he is entitled to credit for attorney's fees and court costs properly expended by him for the defense and preservation of the trust fund; and he is also entitled to credit for the costs and expenses attending the defense of an unfounded suit brought against him by the cestui que trust".

(39 Cyc. 480; Clark vs. Anderson, 13 Bush (Ky) 111; Lycan vs. Miller, 56 Mo. App. 79)

"Where the charges of fraud, collusion and misconduct against the defendants, which formed the main ground of the suit, were proved to be false, unjust and vexatious, it was dismissed with costs as to the defendants not liable to account, and the defendant who was accountable as trustee, was allowed all his taxable costs and exact charges and expenses out of the fund, before distribution."

(Minuse, et al vs. Cox, et al, 5 Johnson's Chancery Reports 441, (N. Y.).

"Where a beneficiary brings a groundless suit against his trustee, the solicitor's fees and expenses of the trustee in defending the suit should be charged against the share of the complainant in the trust estate and not against the estate generally or against a trust fund by which the co-beneficiaries would have to contribute. So, also, where another beneficiary is joined with the trustee he is entitled to have his fees and expenses charged against the share of the beneficiary bringing the suit."

(Patterson vs. Northern Trust Co., 286 Ill. 564).

However, under the laws of Illinois it was held that such fees and expenses could not be included in the costs in any class of cases and taxed against the unsuccessful
827 parties as such. It will be observed that the same result was reached, in substance, by taxing such expenses against the specific shares of the parties charged with the payment of such fees and expenses. However, in the courts of the United States no prohibiting statute is found to prevent direct taxation of such costs. See also, (Kit-

tredge vs. Race, et al, 92 U. S. 116-121; Central R. R. & Banking Co. of Georgia vs. Pettus, et al, 113 U. S. 116).

In the great majority of cases the court has a fund out of which such payments may properly be made. In some cases, where this would work injustice, such costs are charged against the individual share, which is the substantial equivalent of a direct charge against the party. Under the English rule, at least, the court may direct an unsuccessful party to pay the costs of a trustee as between solicitor and client whether there is or not any fund out of which they may be paid. (Turner vs. Collins, supra).

The same doctrine is extended to pledges.

"The pledgee has a lien on the property for any expenses, including the attorney's fees, reasonably incurred by him in keeping and caring for the property pledged, protecting it against liens, taxes, and assessments, or otherwise
828 protecting the pledgor's rights, in making sale for the enforcement of the pledge, in collecting choses in action, and other expenses incurred in rendering the pledged property available for the payment of his debt, although not for any expenses incurred by reason of his own wrongful act'.

(31 Cyc. 826, and cases cited).

The situation in this respect is entirely analogous to that of a trustee against whom an unfounded suit is brought by his cestui que trust. (39 Cyc. 480, supra, and cases cited).

It remains to determine whether this case falls under either, or both, of the classes wherein taxation of costs as between solictior and client has been, or may be, recognized. To determine this it is unnecessary to open and try new issues either before a Master or otherwise. This issue may, and must be, determined from the finding of the Circuit Court of Appeals upon the issues of this litigation already presented to them. The duty devolves upon this court to exercise no independent judgment in this regard, but to give effect to the express findings of a court of superior jurisdiction. There is no escape from the conclusion that the Circuit Court of Appeals was of opinion, and in substance so found, that a plan was formed by the then guiding and controlling powers of the Southern Company to de-
829 spoil the Trust Company of its property, to deprive it of the moneys due to it from the Belt Company, to reclaim the collateral pledged to secure that indebtedness and to

recover a judgment over against it for a very large sum of money; that this was to be accomplished by the suits entitled in the caption hereto, the creditors' bill of the Cambria Company, the ancillary bill of the Belt Company, and the intervening petition of the Southern Company, and also by certain bills for foreclosure filed by the Provident Life and Trust Company, as substituted trustee in the railroad mortgages, including that of the Belt Company. The Circuit Court of Appeals characterizes the Provident Life & Trust Company as "the representative of the Southern Company". The Belt Company, by virtue of the foreclosure and otherwise, was owned by the Southern Company, and is characterized by the Circuit Court of Appeals as "the hand of the Southern Company". Of the Cambria Company that court says:

"It is difficult to wink so hard as not to see that the Cambria suit was in reality the suit of the Southern Company".

So, that, the responsibility of the Southern Company is judicially fixed for the initiation of all this successive litigation against the Trust Company, and the objects of that litigation are also clearly defined. The court then finds
830 that the Cambria suit, so inspired by the Southern Company, was wholly baseless and unwarranted. For the alleged foundation of these suits against the Trust Company reference must be had to the bills filed by the Southern Company and its representatives. The Cambria bill charges that said Trust Company did

"Assume the position of trustee and agent in managing and disposing of the bonds, stocks, funds, and other assets of said railroad companies and auxiliary companies, in trust and for the use and benefit of the parties who might become concerned or interested therein: * * * including particularly creditors thereof and your orator".

An accounting is asked for, which it is charged the Trust Company "has failed and still fails and refuses to make". It further charges that the Trust Company has gathered and appropriated unto itself stocks, bonds, and other assets and property of the Belt Company and has caused the same, under various pretenses and because of various false and unfounded claims and demands to be delivered to the Trust Company to be held by it as alleged collateral security for various pretended claims and demands which it has fraudulently asserted to exist in its favor as against the Belt Company; that these claims and demands are in the form of pre-

tended negotiable promissory notes aggregating about
831 the sum of $500,000. The prayer was for a receiver, for an accounting, for an injunction to restrain the Trust Company from realizing upon its collateral, and for a subjection of said collateral to the alleged lien claim of the Cambria Company. This is the suit which the Circuit Court of Appeals characterized as "baseless and unwarranted, and, in effect, the suit of the Southern Company". The ancillary bill of the Belt Company, which was the pledgor, reiterates, in large measure, the charge of fraud made in the Cambria Bill. It characterizes its notes to the Trust Company as "pretended notes" and its pledged collateral as a "pretended pledge", which it attacks and seeks to have set aside. The intervening petition of the Southern Company in the Cambria suit attacks the Trust Company as trustee and for misconduct, fraud and various breaches of duty as such. It seks to deprive the Trust Company of its collateral and to charge the Trust Company with a liability of nearly $1,000.00 for alleged misconduct as trustee. The intervening petition abounds with charges amounting to gross fraud and with much reiteration of the trust relationship which is alleged to have been betrayed. The Circuit Court of Appeals found all such charges to be unwarranted and without
832 foundation. It is unnecessary to make further reference to the pleadings or the opinions of the court, in which these matters appear more fully than it is deemed necessary to state in this memorandum.

It is claimed by the Southern Company that the fiduciary relationships stated in the pleadings are not of the nature essential to make this a case against the trustee in its representative capacity and thus the foundation for special allowances flowing from those relationships. It is asserted that this was in reality a suit between party and party,—the Belt Company claiming that the Trust Company was indebted to it, and the Trust Company claiming that the Belt Company was indebted to the Trust Company. Such, however, was not the true character of this litigation, as revealed both by the pleadings and by the findings of the Circuit Court of Appeals, as affirmed by the Supreme Court.

If these cases presented issues so narrow as those contended, the jurisdiction of this court in equity could hardly have attached. It will be recalled that the Cambria bill charged the Trust Company with fraud and misconduct, and prayed an accounting with the object of reclaiming the collat-

eral pledged for what it alleged to be a fictitious in-
833 debtedness, and to that end it secured an injunction prohibiting the sale of the pledged securities, to which the Belt Company gave formal assent.

The Belt Compny in its bill in large measure reiterates the charges of fraud made in the Cambria bill and also attacks its notes to the Trust Company as fictitious and the pledge as fraudulent and pretended. The intervening petition of the Southern Company was in re-enforcement and amplification of the two preceding bills, seeks to deprive the Trust Company of its pledged collateral, and takes the forward step of charging the Trust Company with liability for about $1,000,000 for alleged misconduct as trustee, making charges of gross fraud. Under the express finding of the Circuit Court of Appeals these three forms of action, together with the foreclosure proceeding by the Provident Life & Trust Company, as trustee, must be read toegther and regarded as proceeding from a common source, to-wit, the Southern Company. The Trust Company being assailed both as trustee and as pledgee and the integrity for the pledge to it being threatened, and a judgment of $773,246 prayed against it on account of an alleged breach of trust for wrongfully di-
verting the proceeds of bonds secured by mortgage
834 or deed of trust in which it was trustee, was compelled to defend against these charges, and as an incident thereto to seek recovery upon the debt due it from the Belt Company for which the collateral in controversy was pledged. The Trust Company did not initiate this litigation, as the court finds, but was drawn into it by force of the proceedings instituted against it. Its cross-claim was an incident,—a natural and necessary incident to be sure, but nevertheless an incident and not the gist of the litigation. The suits in question involve far more than cross-claims for recoveries in money; they involve the conduct of trust estate and the disposition of securities and funds pledged and held in trust. The fact that an ultimate recovery inhered in the defense of the Trust Company could not, and should not, alter its status.

The right of a trustee or pledgee to recover its legitimate costs and expenses is not, in my opinion, confined to actions on its part for the preservation and [and] augmentation of an estate for the benefit of beneficiares or pledgors. They may be allowed because of unjust attacks involving want on, wilful and oppressive charges of misconduct, such as the Circuit

Court of Appeals has found present in this litigation.
835 (Turner vs. Collins; Minuse, et al. Cox, et al; Patterson vs. Northern Trust Co.; Clark vs. Anderson; Lycan vs. Miller; 31 Cyc. 826 and 39 Cyc. 480. (All cited supra).

It may well be doubted whether the existence of a fund under the control of the court is essential to such relief, but if it be essential, both the pleadings and the opinions of the Circuit Court of Appeals recognize the existence of such fund. In the last opinion of that court, Central Improvement Company vs. Cambria Steel Company, 210 Fed. 696, the court says:

"In case the Southern Company shall pay its debt to the Trust Company and the costs of this suit adjudged in this suit by a day to be named in the decree, then all the collateral security described in paragraph 5 of the former decree which has not then been disposed of, and all the proceeds of such security which has not then been disposed of or applied, shall be surrendered and delivered to the Southern Company; that in case the Southern Company fails to pay its debt to the Trust Company and the costs of this suit by a day to be named by the court in the decree, then the said property of the Central Company and the property of the Belt Company which was transferred to the Southern Company as aforesaid, and the collateral security then remaining in the possession of the Trust Company, or such part or all said property as it shall be necessary to sell in order to pay the debt and costs out of the proceeds of the sale or sales to which the Trust Company * * * shall be equitably entitled be applied to the payment of the debt and of the costs after as well as before the decree until they are completely paid; and that the remainder of the proceeds, if any, be paid to the Southern Company or to such other party as may be equitably entitled thereto."

Furthermore, in the form of decree proposed by the Trust Company this section appears:

836 "The Guardian Trust Company shall forthwith deliver to The Kansas City Southern Railway Company all the collateral security described in paragraph V of the Original Decree, and all the proceeds of such security, which shall not have been disposed of or applied on said judgment."

Under the pleadings the court drew into the possession of its receiver the collateral and funds which were made the primary issue in the Cambria suit and recognized in all the

subsequent litigation by the Circuit Court of Appeals, and now by the parties themselves.

It is suggested that this conclusion on the part of this court must necessarily lead to the results which the Circuit Court of Appeals anticipated and sought to discourage, to-wit, to open and try new issues, and to prolong this litigation through several years more. That court did, however, direct this court to tax the costs under the principles, rules and practice in equity. This the court must do by whatever process and instrumentalities are essential thereto. So to do does not involve the trying of new issues, nor undue prolongation of the litigation. This court is passing no new and independent judgment upon the issues already litigated. The Circuit Court of Appeals, as it says, practically tried the case de novo, and made distinct findings. This court
837 adopts those findings and bases its action upon them, and them alone. If its conception of the powers of a court of equity, and the principles, rules and practice in equity in taxing costs are correct, then to do otherwise than it has done would be to disregard the decision of the Circuit Court of Appeals to a degree amounting practically to contumacy. The fees, costs and expenses that may be charged are such as have already been liquidated and determined; the former almost entirely at the end of contested litigation in courts of last resort. Their ascertainment involves no more than a brief accounting before court or master; and reference to a Master amounts to no more than to relieve the court of the hearing which it must always necessarily have in ascertaining and determining costs of this nature. The form of the decree must, of course, conform to the substantial directions of the mandate. If such be observed to all reasonable intent and purpose, the direction of the Appellate Court is satisfied. It is obvious, of course, that the language of the first five paragraphs of the former decree must be modified as indicated in the opinion of the Circuit Court of Appeals, and, in general, made to conform to the views therein expressed.

This hearing to this stage has served to determine the
838 initial question presented, to-wit, the basis upon which costs are to be taxed, whether as between solicitor and client, or between party and party. Having decided this issue in favor of the Trust Company it remains to settle the items to be taxed; this involves an investigation in the nature of an accounting, the rules governing which are practically well settled. There are also in dispute, or at least not determined, some matters involved in the principal judgment which counsel thought might be substantially settled by

agreement. The court deems it best that the entering of the decree should await the findings upon all the items above referred to. All such matters of accounting are, therefore, referred to Henry D. Ashley, Esq., the Special Master heretofore appointed and acting in this cause, with directions to report his findings and conclusions with all reasonable dispatch.

Kansas City, Missouri, June 20th 1923.

ARBA S. VAN VALKENBURGH
District Judge.

Filed in District Court of the United States June 20th, 1923.

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839 (Opinion on Exceptions to report of Special Master on Motion to Tax Costs.)

In the District Court of the United States for the Western Division of the Western District of Missouri.

Cambria Steel Company, Complainant,
vs. In Equiy
Kansas City Suburban Belt Railroad Company, The Union Terminal Railroad Company, Kansas City Independence Air Line, Guardian Trust Company, Missouri Elevator & Terminal Company, Central Improvement Company, Second Street Improvement Company, Fairmount Amusement Company, and Northern Townsite Company, Defendants.

Bill.

Edward F. Swinney, as Receiver of the Kansas City Suburban Belt Railroad Company, and Kansas City Suburban Belt Railroad Company, Complainant,
No. 2468 vs.
Cambria Steel Company, Guardian Trust Company, Missouri Elevator & Terminal Company, Central Improvement Company and T. T. Crittenden, its Receiver, Northern Townsite Company, and Fairmount Amusement Company, Defendants.

Ancillary Bill

The Kansas City Southern Railway Company, Complainant,
vs.
Guardian Trust Company, Kansas City Suburban Belt Railroad Company and Edward F. Swinney, as Receiver of the Kansas City Suburban Belt Railroad Company, Central Improvement Company and T. T. Crittenden,

its Receiver, Cambria Steel Company, Northern Townsite Company and its Receiver, Fairmount Amusement Company, and Missouri Elevator & Terminal Company, Defendant.

Intervening Petition

840 By this motion the court was moved to tax the costs in this action under the principles, rules and practice in equity as directed by the Circuit Court of Appeals (210 Fed. 696-723). It was the contention of the movant that these costs should be taxed as between solicitor and client. The Kansas City Southern Railway Company contended that they could be taxed only as between party and party. Upon hearing, this court was of opinion that the prayer of the Trust Company should prevail and the matter was referred to the Master for ascertainment of costs upon that theory. There were also some matters of accounting incidental to the settlement of the final decree which required such an examination.

It was recognized that the right to tax costs, as between solicitor and client, depends upon one, or both, of two theories:

First. Where gross charges of fraud and misconduct have been made and not sustained, and where the main ground of the suit is shown to be false, unjust, vexatious, wanton or oppressive. In other words, where charges amounting to scandal and a misuse of the courts are made and not
841 sustained, but found to be baseless and unwarranted.

Second. Where a fiduciary relation exists between the parties, such as trustee and cestui que trust, or pledgor and pledgee, or principal and agent, and where the fiduciary is put to expense in the defense of an unfounded suit brought against him by such cestui que trust, pledgor or principal, especially where charges of gross fraud and misconduct have been made against a fiduciary and have been found baseless and unwarranted.

As to the nature of the Cambria suit, its purpose, and the responsibility of the Southern Company therefor, this court conceived itself bound by the finding of the Circuit Court of Appeals; the only question being the interpretation of the language "under the principles, rules and practice in equity." From the briefs and arguments adduced at the initial hearing, which resulted in the appointment of the Mas-

ter, the court reached no final conclusion respecting the rule stated under class one, supra. It said:

"It would seem that the power of a national court of equity to tax costs and expenses as between solicitor and client, in cases falling under class one, as above stated, should not be considered as foreclosed, but, on the contrary, that some express decision of the Supreme Court in a case involving essential facts is greatly to be desired."

On the second point, to-wit, where a fiduciary relation
842 exists between the parties, and defined in class two, the court was of opinion that the situation presented, as disclosed by the briefs and arguments, warranted the taxation of costs as between solicitor and client. The matter was referred and the Master has made his report on that theory. Upon exceptions the case has been more exhaustively presented; with marked ability and industry counsel on both sides have left nothing undone to acquaint the court with the doctrine prevailing both in this country and in England. The importance and far reaching effect of the principle involved and the earnestness and learning brought to bear by counsel upon that question have demanded and received very exhaustive and critical examination on the part of the court, greatly impeded and delayed because of the insistent demands of current matters in the district court and later in the Circuit Court of Appeals. Language may be found in the cases which lends plausibility to many contentions of counsel, and it is only by careful analysis and extended examination that the true rules may be deducted.

There can be little doubt, I think, that in the Chancery Court of England discretion and power is lodged to tax costs as between solicitor and client in a case like that before us.

That original jurisdiction in equity in a particular
843 class of cases conferred by the Constitution on this court has been interpreted to impose the duty to adjudicate according to such rules and principles as governed the action of the Court of Chancery in England has been repeatedly stated by the Supreme Court.

(Russell vs. Farley, 105 U. S. 433-445; Dodge vs. Tulley, 144 U. S. 451; 25 Corpus Juris 802; and cases cited; Pennsylvania vs. Bridge Co., 18 Howard 521).

Rule 90 of the Supreme Court, adopted at a very early date, is as follows:

"Practice—In all cases where the rule prescribed by this court or by the Circuit Court do not apply, the practice of the

Circuit Court shall be regulated by the present practice of the High Court of Chancery in England, as far as the same may reasonably be applied consistently with the local circumstances and local conveniences of the district where the court is held, not as positive rules, but as furnishing just analogies to regulate the practice."

It has been held that though this rule was not carried forward into the present equity rules, adopted in 1912, it still continues in force and effect; its omission from the present rules being due to the fact that it has become so imbedded in the jurisprudence of the federal courts as to make its inclusion no longer necessary.

(Individual Drinking Cup Co. vs. Union News Co., et al., (C. C. A. Second Circuit) 250 Fed. 624; Lindley vs. Denver, (C. C. A. Sixth Circuit) 259 Fed. 83.)

It is, of course, recognized that state statutes cannot re-
844 strict or limit the equity powers of the federal courts.

(Missouri Pacific R'y. Co. vs. Larabee, 234 U. S. 459; Guffey vs. Smith, 237 U. S. 102-114; Kirby vs. Lake Shore & Michigan Southern R. R., 120 U. S. 130; Payne vs. Hook, 7 Wall. 425).

If we were to stop here it would seem that the power of this court to tax costs as between solicitor and client must be undoubted; but we are not permitted to rest our conclusion upon literal definition however applicable the language may be as applied to the case in which it was used. The case of Pennsylvania vs. Bridge Company was concerned with the right of a court of equity to impose costs at all, and for precedent resort was had to the practice of the Court of Chancery in England. The rule in Russell vs. Farley was announced to prevail in the absence of any statute to the contrary. In Dodge vs. Tulleys it is said that the federal courts proceed according to the general rule in equity except so far as such rules are changed by the legislation of Congress. It is undoubtedly true that we still look to the chancery practice of England, where our own has not in some particular become well settled, whether by statute, by express rule of court, or by long established practice in the absence of such express rule. Former Rule 90, to which reference has been made, recognized the practice of the High Court of Chancery
845 of England with this reservation:

"As far as the same may reasonably be applied consistently with the local circumstances and local conveniences

of the district where the court is held, not as positive rules, but as furnishing just analogies to regulate the practice".

It becomes necessary then to examine not only the legislation of Congress, but the practice recognized and reiterated by the courts of the United States through a long period of years, to determine whether we have departed, and to what extent, from that of the English courts in this particular. It is, of course, not claimed that modifications have not been made and the policies have not been announced in many particulars by reason of which the equity practice in this country presents material differences from that prevailing in England. In order to settle the confusion then existing in the national courts with respect to the taxation of costs involving the allowance of counsel fees as an element thereof, Congress passed an Act limiting the amount of compensation that should be taxed and allowed to attorneys, solicitors and proctors in the courts of the United States. (Rev. Stat. 823; Compiled Stat. Section 1375). The amount thus allowed was nominal. In Trustees vs. Greenough, 105 U. S. 527, the court had under consideration the allowance of counsel fees
846 of a trustee to be taxed as costs. Mr. Justice Bradley entertained doubt whether it was in his power, under the Act of 1853, to make such allowance. He says:

"My doubt was of my power in the premises under the fee-bill of 26th February, 1853, (10 Stat. 161), which does not appear to sanction it, and does appear to be intended to cover the whole ground of taxation of costs at law and in equity and admiralty; and by the general orders, these petitions follow the rule of cases in equity in all matters of costs. Upon reflection I have concluded that the fee-bill is probably intended to reach only taxable costs commonly so called, and may have its full effect without being construed to take away the power of a court of equity to permit counsel fees to be taxed in those cases where a fund is in court upon or to which different parties have distinct rights or claims".

The distinction drawn by the learned Justice is clearly one which does not apply to the case at Bar unless a fiduciary relation existed and there is present a fund to which different parties have distinct claims out of which such an allowance can be made. Of course, it has been held in many cases that the fee-bill statute does not control the discretion of a court of equity in all cases. Allowances may be made and paid out of a fund to trustees and their counsel and to those generally who have, by their efforts, augmented or preserved such a fund; and in a case of a true trusteeship where the trustee

has no interest in the property other than to administer it faithfully for the benefit of others, his costs and expenses, including counsel fees, it would seem may be charged against a beneficiary even in the absence of a fund.

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And, of course, a court of equity, unlike a court of law, may apportion costs in furtherance of justice without regard to the winning or losing party in a technical sense, but it will be found, I think, that almost without exception the right of the court to depart from this statutory prohibition has not been further extended.

On the other hand, in a practically unbroken line of decisions, the Supreme Court and the inferior courts of the United States, have set their faces firmly against the allowance of counsel fees and expenses in excess of taxable costs between party and party no matter how unwarranted or vexatious the litigation may be.

(Arcambel vs. Wiseman, 3 Dallas 306;

the Baltimore, 8 Wallace 377;

Oelrichs vs. Spain, 15 Wallace 211;

Day vs. Woodworth, et al, 13 Howard 362;

United States vs. Waters, 133 U. S. 208;

Tullock vs. Mulvane, 184 U. S. 497;

M. K. & T. R'y. Co. vs. Elliott, 184 U. S. 530;

Missouri Pacific R'y. Co. vs. Larabee, 234 U. S. 459;

Ex Parte Peterson, 253 U. S. 300;

Adams vs. Kehlor Milling Co., et al (D. C.) 38 Fed. 281;

Fidelity, etc. Safe-Deposit Co. vs. Roanoke Iron Co., (D. C.) 91 Fed. 19;

Gilbert vs. American Surety Co., (C. C. A. 7th Circuit), 121 Fed. 499;

McIntosh vs. Ward, et al, (C. C. A. Seventh Circuit), 159 Fed. 66;

Doddridge County Oil & Gas Co. vs. Smith, (D. C.) 173 Fed. 386;

Michigan Aluminum Foundry Co. vs. Aluminum Co. of America, et al, (D. C.) 190 Fed. 903;

New York Central R. R. Co. vs. Bank of Holly Springs, (C. C. A. Fifth Circuit) 195 Fed. 456;

Motion Picture Patents Co. vs. Steiner, (C. C. A. Second Circuit), 201 Fed. 603;

Bone vs. Walsh Const. Co., (D. C.) 235 Fed. 901;

Grant vs. Fletcher, (D. C.) 283 Fed. 243).

848 Citations throughout the circuits, as well as in the Supreme Court, to the same effect might be greatly extended, but the foregoing is deemed sufficient to indicate the trend of decision. It is true that the cases involved differ widely in character; not all of them are in equity, nor do many of them involve a state of facts exactly, or even closely, similar to those here presented, but all contain language, interpretative of the American policy respecting the taxation of costs, of such a nature as clearly to indicate the rule that has become firmly established in the American courts.

The facts in Arcambel vs. Wiseman, 3 Dallas 306; are not stated. It is evidently an equity case because the judgment appealed from, in which counsel fees of $1600 had been allowed, is referred to as a decree. The court said:

"We do not think that this charge ought to be allowed. The general practice of the United States is in opposition to it; and even if that practice were not strictly correct in principle, it is entitled to the respect of the court, until it is changed, or modified, by statute".

Oelrichs vs. Spain, 15 Wallace 211, concerned the allowance of counsel fees on an injunction bond. The case of Arcambel vs. Wiseman was quoted with approval. Mr. Justice Swaine said:

"In debt, covenant and assumpsit damages are recovered, but counsel fees are never included. So in equity cases, where there is no injuction bond, only the taxable cost
849 are allowed to the complainants. The same rule is applied to the defendant, however unjust the litigation on the other side, and however large and expensa litis to which he may have been subjected. The parties in this respect are upon a footing of equality. There is no fixed standard by which the honorarium can be measured. Some counsel demand much more [that] others. Some clients are willing to pay more than others. More counsel may be employed than are necessary. When both client and counsel know that the fees are to be paid by the other party there is danger of abuse. A reference to a Master, or an issue to a jury, might be necessary to ascertain the proper amount, and this grafted

litigation might possibly be more animated and protracted than that in the original cause. It would be an office of some delicacy on the part of the court to scale down the charges, as might sometimes be necessary.

We think the principle of disallowance rests on a solid foundation, and that the opposite rule is forbidden by the analogies of the law and sound public policy".

It will be seen that this statement covers all equity cases, however unjust the litigation on the losing side may be, and however large the expense of the litigation to which the winner may have been subjected. It pointed out that in this country there is no fixed standard by which the honorarium can be measured. The decision is based not only upon the analogies of the law, but upon sound public policy. In the respects pointed out the ruling exactly fits the situation with which we are dealing. The same principle is recognized in Flanders vs. Tweed, 15 Wallace 450. Oelrichs vs. Spain was decided in 1862, and may be taken as having the Act of 1853 in mind, although the Act is not mentioned. In Tullock vs. Mulvane, 184 U. S. 497, Rule 90 was quoted and considered. It is there stated that:

"Proceedings in courts of equity of the United States
850 are regulated by rules promulgated by this court deriving their force from statutory authority".

The court quotes approvingly from Oelrichs vs. Spain, supra, and the following language taken from Day vs. Woodworth, 13 How. 370-371:

"In actions of trespass where there are no circumstances of aggravation, only compensatory damages can be recovered, and they do not include the fees of counsel. The plaintiff is no more entitled to them, if he succeed, than is the defendant if the plaintiff be defeated. Why should a distinction be made between them? In certain actions ex delicto [vindicitive] damages may be given by the jury. In regard to that class of cases this court has said: 'It is true that damages assessed by way of example may indirectly compensate the plaintiff for money expended in counsel fees, but the amount of these fees cannot be taken as the measure of punishment of a necessary element in its infliction".

The same principles are restated in Missouri, Kansas & Texas Railway Co. vs. Elliott, 184 U. S. 530.

In The Baltimore, 8 Wall. 377-392, it is said:

"Attorneys, solicitors, and proctors may charge their clients reasonably for their services, in addition to the taxable costs, but nothing can be taxed as costs against the opposite party, as an incident to the judgment, for their services, except the costs and fees therein described and enumerated".

Reference is made to the Act of February 26, 1853, and while this was an admiralty case that Act is thus broadly construed.

In Missouri Pacific Railway Company vs. Larabee, 234 U. S. 459-471, it was stated that the action of the trial court in assessing against one party to a suit a sum for attor-
851 ney's fees for services rendered in that court as against another party to the suit was not only not authorized by the law of the United States, but was in conflict with the settled rule in the Supreme Court of the United States.

In Day vs. Woodworth, et al, 13 How. 362, the reason for the policy adopted by the courts of the United States is thus further stated:

"The expenses of the defendant over and above taxed costs are usually as great as those of plaintiff; and yet neither court nor jury can compensate him, if the verdict and judgment be in his favor, or amerce the plaintiff pro falso clamore beyond tax costs. * * * There is no reason, therefore, why the law should give the plaintiff such an advantage over the defendant in one case, and refuse it in the other."

In Hauenstein vs. Lynham, 100 U. S. 483, the Supreme Court says:

"It is the settled rule in this court never to allow counsel on either side to be paid out of the fund in dispute".

In Doddridge County Oil & Gas Co. vs. Smith, 173 Fed. 386-388, it is pointed out that:

"To this general rule there has been certain exception made in cases where a plaintiff has in his own interest and that of others impounded a fund for the mutual benefit of all. In such cases the solicitors of plaintiff have been allowed their fees out of the funds so impounded and decreed to those in the same class as their client. Such cases arise where suits are brought to set aside conveyances for the benefit of creditors, for the administration of decedents' estates, for appointment of receiver and to wind up insolvent estates, to enforce stockholders' liability, and in bankruptcy".

In Motion Picture Patents Co. vs. Steiner, 201 Fed.
852 63-65, Judge Coxe, speaking for the Court of Appeals for the Second Circuit, says:

"The question here is not what the law should be, but what it is. Unquestionably the laws of New York are much more liberal in the matter of costs and allowances than those of the United States, where the costs are hardly more than nominal. In Isolated cases the inability of the court to make an adequate allowance may produce hardship. But, on the other hand, the federal system has advantages which are obvious to all who have practiced in the courts of the United States".

In Adams, et al, vs. Kehlor Milling Co., et al, 38 Fed. 281-282, Judge Thayer said:

"It is well settled that when, under a bill filed by one beneficiary in a trust, in behalf of himself and all other beneficiaries, a fund is recovered and brought into court for distribution, the court may tax a reasonable solicitor's fee as costs, and order it to be paid out of the fund so recovered. Trustees vs. Greenough, 105 U. S. 527; Banking Co. vs. Pettus, 113 U. S. 116. This rule rests upon the ground that where one litigant has borne the burden and expense of a litigation that has inured to the benefit of others as well as himself, those who have shared in the benefits should contribute to the expense. In that class of cases it is customary to tax against the fund realized a fee in favor of complainant's solicitor, before any distribution is ordered. For even this rule would not authorize the court to tax the costs as between solicitor and client against the defendants. Defendants are liable for a fee of $20, taxed under section 824, Rev. St. U. S. If any further fee is taxed, it must be taxed against a fund actually or constructively in the custody of the court for the purpose of distribution".

In Fidelity Insurance Trust & Safe-Deposit Co. vs. Roanoke Iron Co., 91 Fed. 19-21, the rule is thus stated:

"The general principle is that a litigant must pay his own counsel fees, and he cannot recover them in the shape of costs from his adversary, nor can he put the burden of their payment upon others entitled to participate in a fund under the control of a court of equity. An exception is made where he has by his services produced the fund, and where his interest is the same as that of others who are benefited by his efforts".

853 Mr. Michie, in his Encyclopedia of United States Supreme Court Reports, volume 4, page 817, states the rule thus:

"Although under the federal statutes and those of the various states, the legal taxed costs are far below the real expenses incurred by the litigant, yet it is all the law allows as expensa litis."

One cannot escape the conclusion, whatever he may think the law ought to be, that under the statutes of the United States, and the policy announced by its courts from highest to lowest, costs as between solicitor and client cannot be taxed against the losing party, however unjust and expensive the litigation, in the absence of the existence of a fiduciary relation, with the necessary incidents which create an exception of this rule, and that, in this respect, the practice which may prevail in the Chancery Courts of England can have no controlling effect.

The next inquiry is whether this case falls within the second class; that is to say, where a fiduciary relation exists between the parties, such as trustee and cestui que trust, or pledgor and pledgee, under circumstances which raise an exception to the general rule. It is recognized generally that where the fiduciary is put to expense for the protection of the property and estate in his custody, or in defense
854 of the title of his pledgor, he is entitled to be compensated for his out-lay out of the fund or property in his hands, and in some instances, it would appear, by the cestui que trust or pledgee where a fund is not available. This doctrine applies almost, if not quite, exclusively to true or naked trustees, and the reason involved in the rule is that such trustees have no beneficial interest in the trust property. It may be well at the outset to state some of the principles recognized by the authorities and in the decisions by which this distinction is made clear.

The general rule is that trustees shall have their costs out of the trust fund or from the cestui que trust personally. If there is a fund within the control of the court they may have their costs as between solicitor and client. Where there is no fund within control of the court, if the cestui que trust bring the trustees before it to obtain a direction as to the rights of the parties, or the mode of administration, and the trustees are free from all blame or fault, they are entitled to costs against the cestui que trust personally, to be taxed as between solicitor and client.

(Perry on Trusts, 6th Edition, par. 894 and note).

Trustees will be allowed all the expenses of litigation concerning the fund, and all costs which they are ordered
855 to pay to strangers, if the litigation was forced upon them, or was necessary for the protection of the estate.

(Ibid, section 910).

But a trustee cannot recover as between solicitor and client if he has a personal interest in the fund or litigation. The general rule is, that if trustees bring suits against strangers, or strangers bring suits against trustees respecting the trust fund, costs will be awarded againt the losing party, as in other suits. In all cases where trustees are compelled to pay costs in suits with strangers, the costs are taxed as between party and party, and not as between attorney and client. Where plaintiffs bring a bill against defendants for the purpose of creating a trust fund,—as if they bring a bill to convert defendants into trustees under a constructive trust, or to compel the defendants to hold certain property in their hands in trust for the plaintiffs,—the defendants can have costs only as between party and party, if the plaintiffs fail; for the suit in such case turns out to be between strangers.

(Ibid, par. 896).

If a trustee sets up a claim of his own to the trust property, and fails in his claim, he must pay all costs. So if a
856 trustee has some private interest of his own, separate from and independent of the trust, and he compels the cestui que trust to come into a court of equity, merely for the purpose of procuring a decision, at the expense of the estate, upon some point relating to his own private interest, the court will decree him to pay the whole costs.

(Ibid, section 900).

The general rule is that counsel fees are not recoverable as costs by a successful party in actions either at law or in equity. Of course, it is generally recognized that where any party, such as a creditor, augments an estate by his own efforts and expenditure, he should be reimbursed out of that with which he enriches the claimants to that estate; and where a trustee is put to necessary expense, including the fees of counsel, in protecting an estate which he holds under order of court, or otherwise, for the benefit of others, as well as himself, he should be reimbursed therefor out of that estate. Trustees vs. Greenough, 105 U. S. 527, upon which counsel for the Trust Company strongly rely, and Dodge vs. Tulleys, 144

U. S. 451, to which reference is commonly made to sustain allowances to such trustees, go no further than this. And the general trend of decision is that the exception to the
857 rule as to taxation of costs in federal jurisdictions and allowances to trustees and their counsel is based upon some fund or estate which has been conserved or augmented by those who have either no interest therein or a joint interest with other parties entitled thereto.

(Adams, et al, vs. Kehlor Milling Co., 38 Fed. 281; Doddridge, etc. Gas Co. vs. Smith, 173 Fed. 386; New York Cent. & H. R. Co. vs. Bank of Holly Springs, 195 Fed. 456; Cuyler vs. Atlantic & N. C. R. Co., 132 Fed. 570; Lottery Co. vs. Clark, 16 Fed. 20; Malcomson vs. Wappo Mill, et al, 97 Fed. 225).

The familiar application of this rule is to be found in railroad receiverships and the like where an estate comes into the control of the court through a receiver. So, also, in the case of trust estates established by will or deed. It would be impracticable to extend this memorandum by quotations from the great number of citations available wherein these principles and the distinctions herein drawn are pointedly expressed and reiterated.

The original debt of the Belt Company to the Trust Company was about $360,000; to secure this it received securities of the Belt Company, which are referred to in this controversy as a trust fund or pledge. Of course, this transaction did not constitute the Trust Company a trustee in a true sense except in so far as such a depositary always holds the
858 property, in excess of that required to satisfy its debt, in trust for the debtor. The real relationship existing is that of creditor and debtor. Any suit between the parties, at law or in equity, whereby the indebtedness is denied or a counter-claim or off-set is interposed, is, in effect, a suit between party and party. The contest here was ultimately between the Southern Company and the Guardian Trust Company; the latter was defending in its own right and seeking a recovery in its own right. It is true that in the intervening petition of the Southern Company the Guardian Trust Company is referred to as a trustee, and it is claimed that in its administration of matters other than those immediately in controversy, it has assumed, in legal effect, the position of a trustee, and that because of certain acts, claimed to be unlawful, it had made itself liable to respond to the estate to which the Southern Company has succeeded; but this, upon analysis, was no more than seeking to convert the Trust Com-

pany into a trustee under a constructive trust, and to compel it to hold certain property in its hands in trust for the plaintiffs in that sense. In such cases, as we have seen, a defendant can have costs only as between party and party. The allegations of fraud and misconduct add nothing to the rights of the party in this respect. The recovery in a large amount in excess of the original debt of $360,000 was due en-
859 tirely to the natural increase of the principal amount over a long period of years. In the end of the Trust Company recovered from the Southern Company its debt with interest and the counter-claims of the Southern Company were rejected. The claim of the Trust Company, as a pledgee, stands upon the same plane. If a pledgee has been put to expense in order to protect the property pledged against strangers and to vindicate the pledgor's title, the gross proceeds available for the payment of the debt must be reduced to the extent of the expenses thus incurred. The rule in such cases goes no further than that.

(Work vs. Tibbits, 87 Hun. 352; Wolf vs. American Trust & Savings Bank, 214 Fed. 761; Smith vs. Equitable Trust Co., 215 Penn. 413; Willard vs. White, 56 Hun. 581).

In as much as in this case the entire debt of the Southern Company to the Trust Company has been, and will be, paid in cash upon the settling of this decree, the sufficiency of the property pledged to satisfy it is not of moment. The Trust Company has not brought into the estate anything apart from its own claim as a party litigant, directly and exclusively interested in the outcome of the litigation. In such cases the right to costs as between solicitor and client does not exist.

It will thus be seen that I have been forced, upon ful-
860 ler investigation, to revise the view originally entertained. The Master has made his report pursuant to the directions contained in the reference, as was his duty. The exceptions of the Southern Company to his report in the particulars mentioned must be sustained as a result of the view which the court now takes of this issue.

I am persuaded, upon reflection, that the conclusion I have reached accords with the judgment of the Circuit Court of Appeals, as disclosed in its opinion, (210 Fed. l. c. 723) wherein it said:

"As directions to the court below to open and try new issues might, and probably would, prolong this litigation through several years more, our conclusion is that our just course is to leave the taxation of costs to the court below under the principles, rules, and practice in equity".

Evidently it was felt that further action in this court should be confined to such taxation of costs and that the recovery of the Trust Company should be limited thereto. I have endeavored to make that taxation in accordance with the principles, rules, and practice in equity as I now understand them, and it results that it should be made as between party and party. It remains then to consider the items of which such costs are made up, as disclosed by the report of the Master, because necessarily they are included within those taxable between solicitor and client.

861 As between party and party the Master allowed items 1, 2, and 3 in the sum of $8,553.50; also items 4 to 32 in the sum of $2,725.77; also costs taxed by the Court of Appeals and clerk of the Circuit Court of Appeals in the sum of $1,791.20; also item 34 for copy of document in the sum of $1.15; also an item for separate copies of documents, etc. in the sum of $180.45; making a total of $13,252.05. These allowances are not contested by the Southern Company. Item 33, for a stenographer who did some work in place of Mr. Jetmore, was disallowed by the Master. I can see no reason why this item should not be included; this would raise the allowances thus far to $13,274.10. In addition the Master takes up, properly, some matters in dispute and undetermined, involved in the principal judgment. He finds that upon a note for $7,162.40, dated October 23, 1899, in the computation heretofore made before final decree, but six per cent interest was allowed, whereas the note bore eight per cent. This was undoubtedly an inadvertence, and the Master finds that two per cent additional should be added from October 23, 1899 to the date of entry of final decree without compounding. In this conclusion I think the Master is right.

862 This would amount, as the court figures it, to $3,724.24, which, added to the foregoing items, makes a total of $16,998.34.

The Master also finds that the Southern Company was not credited with interest actually earned on special deposit in the aggregate of $4,611.99; $737.02 of this was earned October 25, 1902 and $3,874.47 was earned April 15, 1916. The Master allowed interest on the aggregate of these sums from April 15, 1916. It is my judgment that interest should be allowed on the first item from October 25, 1902 and on the second item from April 15, 1916. The amount of the interest thus allowed would be $3,154.42 and the aggregate would be $7,764.91; subtracting this from $16,998.34 would leave a net allowance of $9,233.43. The receiver files exceptions to the

disallowance by the Master of $3,948.93 paid to Jetmore for carbons. The Master allowed the amount paid for the originals and disallowed the amount paid for carbons because furnished for convenience of counsel. Counsel for the receiver argue, with much plausibility, that these carbon copies, in view of the tremendous size of the record, were essential to enable counsel properly to present the case in aid of Master and court. I do not think in principle, however, that this case can thus be differentiated from those coming under the established rule in the absence of an order of court
863 which clearly contemplated and recognized the necessity of these carbons as taxable items.

Ex Parte Peterson, 253 U. S. 300, had to [to] with the allowance of the expense of an auditor and the original of the stenographer's minutes. The court said that in cases where copies have been disallowed they were made for the benefit of the party as distinguished from expenditures incurred under order of the court to make possible or to facilitate its consideration of the case. I do not find that the court made any order susceptible of this construction.

In Stallo vs. Wagner, (C. C. A. Second Circuit), 245 Fed. 366, the court gave exhaustive consideration to the cases and struck from the bill of costs an item alleged to have been paid by the defendant for a copy of the stenographer's minutes. It construed Rule 50 of the Supreme Court as unavailable for the allowance of such fees, and this case was approved in Ex Parte Peterson, supra. To the same effect is The William Branfoot, 52 Fed. 390, opinion by Chief Justice Fuller. In Newton vs. Consolidated Gas Co., 265 U. S. l. c. 85, the desirability of a rule permitting such allowances is voiced, thereby, by implication, holding that such authority does not exist in the absence of rule, or, at least, special order.
To the same effect is Atwood vs. Jaques, 63 Fed. 561,
864 opinion by Judge Philips in this district. The ruling of the Master on this point must, I think, be sustained.

I have taken up these matters in order that counsel might be advised of the court's ruling upon the contested points respecting costs as between party and party. It is quite possible, in view of the great complexity of the items discussed in the briefs, that I may have overlooked some matters; also, the computations may not be exact and it is not intended by this memorandum to foreclose the parties from calling such omissions and inaccuracies, if any, to the attention of the

court for correction when the final decree is presented and settled.

Kansas City, Missouri, March 22, 1926.

ARBA S. VAN VALKENBURGH,
Judge.

Filed in the District Court of United States, March 23, 1926.

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865 (Clerk's Certificate to Transcript.)

United States of America, Set:

I, Edwin R. Durham, Clerk of the District Court of the United States for the Western Division of the Western District of Missouri, do hereby certify that the foregoing, consisting of two volumes—Vol. 1 pages 1 to 430, Vol. 2 pages 431 to 865 inclusive—is a full, true and complete copy of the record, assignment of errors and all proceedings called for in the praecipes filed herein and made a part hereof in the cause wherein the Cambria Steel Company, et al., are Complainants, and the Guardian Trust Company, et al., are Defendants, as fully as the same appears on file and of record in my office.

I further certify that the original Citation is prefixed hereto and returned herewith.

Witness my hand as Clerk and the seal of said Court. Done at office in Kansas City, Missouri, this 10th day of March, A. D. 1927.

Seal
U. S. Dist. Court
West. Div.
West. Dist.
of Missouri.

EDWIN R. DURHAM
Clerk U. S. District Court.
By H. C. Spaulding
Deputy Clerk.

Filed Mar. 21, 1927. E. E. Koch, Clerk.

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721 And thereafter the following proceedings were had in said cause in the Circuit Court of Appeals, viz:

(Appearance of Counsel for Appellants.)

United States Circuit Court of Appeals, Eighth Circuit.

Guardian Trust Company, Henry C. Flower, Receiver, Appellant,

No. 7784. vs.

Kansas City Southern Railway Company.

The Clerk will enter my appearance as Counsel for the Appellant.

JUSTIN D. BOWERSOCK,
Fidelity Trust Bldg., Kansas City, Mo.

HARRY S. MECARTNEY,
105 W. Monroe St., Chicago, Ill.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Mar. 21, 1927.

(Appearance of Mr. Cyrus Crane as Counsel for Appellee.)

The Clerk will enter my appearance as Counsel for the Appellee.

CYRUS CRANE,
304, 1st. Nat. Bank Bldg.,
Kansas City, Mo.

(Endorsed): Filed in U. S. Circuit Court of Appeals, May 16, 1927.

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722 (Appearance of Mr. S. W. Moore, Mr. F. H. Moore and Mr. A. F. Smith as Counsel for Appellee.)

The Clerk will enter my appearance as Counsel for the Appellee.

S. W. MOORE,
F. H. MOORE,
A. F. SMITH.

(Endorsed): Filed in U. S. Circuit Court of Appeals, May 17, 1927.

(Order of Submission.)

December Term, 1927.

Monday, December 12, 1927.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Justin D. Bowersock

for appellants, continued by Mr. Samuel W. Moore and concluded by Mr. A. F. Smith for appellee.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

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723 (Opinion.)

United States Circuit Court of Appeals, Eighth Circuit.

May Term, A. D. 1928.

Guardian Trust Company, Henry C. Flower, Receiver, Appellant,

No. 7784. vs.

The Kansas City Southern Railway Company, Appellee.

Appeal from the District Court of the United States for the Western District of Missouri.

Mr. Justin D. Bowersock (Mr. Harry S. Mecartney was with him on the brief), for appellant.

Mr. S. W. Moore and Mr. A. F. Smith (Mr. F. H. Moore and Mr. Cyrus Crane were with them on the brief), for appellee.

Before Sanborn and Booth, Circuit Judges, and Munger, District Judge.

Booth, Circuit Judge, delivered the opinion of the court.

This is an appeal from a decree which granted to appellant (defendant below) relief as to principal matters involved, but failed to allow as costs a certain class of items to which appellant claimed to be entitled, but which the court held it had no authority to allow. The assignments of error all relate to the failure of the court to allow these costs as claimed by the appellant.

For brevity, the Guardian Trust Company will be called Trust Company; and the Kansas City Southern Railway Company, the Southern Company.

724 The litigation out of which these costs arose was commenced against appellant in September, 1900, and has continued to the present time. The history and details of the litigation may be gathered from the opinions reported in 146 F. 337; 171 F. 43; 201 F. 811; 210 F. 696; 240 U. S. 166. See

also 240 F. 689; 280 F. 64. The character of the litigation will be presently stated.

This court by its decree of December 2, 1913, reversed the decree of the trial court on the merits of the case, and directed that court to render a decree for the Trust Company in accord with the views expressed in the opinion of this court. In the opinion it was stated that application had been made to this court by certain stockholders of the Trust Company to direct the court below to find the amount of attorney's fees, expert accountant's fees and stenographer's fees incurred by the Trust Company in the litigation, and to render a decree therefor in favor of the Trust Company. In reference to that application this court said:

"'A deliberate consideration of this petition and of the exhaustive arguments of counsel have, however, persuaded that inasmuch as the questions suggested came for the first time into this suit at the rehearing in this court, as no evidence has been taken relative to them, and as the evidence upon the issues tried in this case was not brought to this court, it would be unwise and might be unjust to adjudicate the questions presented by the petition of these stockholders. Moreover, as this court cannot rightly determine the questions relating to the costs to be taxed at this time, as there are established rules of practice concerning them, and as directions to the court below to open and try new issues might, and probably would, prolong this litigation through several years more, our conclusion is that our just course is to leave the taxation of costs to the court below under the principles, rules, and practice in equity.'' 210 F. 696, 723.

The decree of December 2, 1913, was affirmed by the Supreme Court (240 U. S. 166), and the mandate of that court carried the case back direct to the trial court.

Thereafter, a motion was made in the trial court that a final decree be entered, and that costs and expenses of the litigation be allowed and adjudged in favor of the Trust Company. The Trust Company prayed that costs be taxed in its favor "as between solicitor and client". The appellee,
725 Southern Company, insisted that the costs be limited to such as were taxable "between party and party". After considering the matter the court filed a memorandum, in which it was held,—

"The right to tax costs as between solicitor and client depends upon one, or both, of two theories recognized in the law.

"First. Where gross charges of fraud and misconduct have been made and not sustained, and where the main ground of the suit is shown to be false, unjust, vexatious, wanton or oppressive. In other words, where charges amounting to scandal and a misuse of the courts are made and not sustained, but found to be baseless and unwarrantable.

"Second. Where a fiduciary relation exists between the parties, such as trustee and cestui que trust, or pledgor and pledgee, or principal and agent, and where the fiduciary is put to expense in the defense of an unfounded suit brought against him by such cestui que trust, or pledgor or principal, especially where charges of gross fraud and misconduct have been made against a fiduciary and have been found baseless and unwarrantable."

The court further held that costs "as between solicitor and client" might properly be taxed in the instant suit under the second theory. Thereupon a special master was appointed,—

" * * to ascertain, take, and state an itemized account of all costs and expenses paid or incurred by the Guardian Trust Company or its various Receivers for and on account of court costs and other expenses incurred by said Trust Company and its Receivers in and about its resistance of and defense against this litigation, and in defending against the various original and dependent bills and petitions filed herein against the Guardian Trust Company or its Receiver, by or at the instance of Kansas City Southern Railway Company, Cambria Steel Company, Kansas City Suburban Belt Railroad Company or its Receivers, or its subsidiary companies or their Receivers, parties to this cause, and in defending, maintaining, protecting, and preserving therein the right, equity, title, and lien of the Guardian Trust Company of its Receivers as pledgee of the property described in paragraph V. of the former decree of June, 1910, or in the property of any corporation whose stock was so held in such pledge, and the right
726 to dispose of and realize upon said pledged property in accordance with the terms of the pledges under which said property was pledged, including, among other expenses, those for attorneys' fees, counsel or solicitors' fees, stenographers' fees, expert accountants' fees, printing fees, traveling expenses, and other expenses incurred in the premises".

On September 15, 1924, the special master filed his report wherein he set out at length the items of expense incurred by the Trust Company in the litigation, and specified those which

he allowed and those which he disallowed. Fourteen exceptions to this report were filed by the Trust Company; thirty-nine were filed by the Southern Company.

On March 23, 1926, the trial court filed a memorandum in which it was stated that upon fuller investigation the court was forced to revise its former views, and that it now held that no costs were allowable to the Trust Company "as between solicitor and client". Final decree was accordingly entered May 15, 1926, in which costs were allowed to the Trust Company only as "between party and party". The present appeal followed:

The Character of the Litigation.

In any inquiry whether costs "as between solicitor and client" should be allowed a litigant in an equity suit, the character of the litigation is one of the main determining factors. It becomes necessary, therefore, in the instant suit to examine into the character of the litigation.

The bill filed by the Cambria Steel Company (hereafter called the Cambria Company) September 6, 1900, against the Kansas City Suburban Belt Railroad Company (hereafter called the Belt Company) and various other corporations, including the Guardian Trust Company, purported to be a creditor's bill against the Belt Company. In addition to the usual allegations, however, the bill alleged that the Trust Company had caused the incorporation of the constituent companies which afterward became the Belt Company, and absolutely dominated and controlled their affairs; that it had caused several other corporations to be formed for the purpose of building railroads, caused them to issue bonds to pay for the same, and completely dominated their affairs; that the Trust Company had caused the stocks and bonds of these various companies to be delivered to it, had sold the same, and had applied the excess of the proceeds over the cost of the railroads in the payment to itself of commissions
727 and for services; that the Trust Company had assumed the position of trustee and agent in managing and disposing of these stocks and bonds, and had failed and refused to make an accounting therefor; that the Trust Company by reason of these transactions was owing the Belt Company a large amount of money. The bill alleged further that the Trust Company had caused the legal title to properties necessary to be used by the railroad companies, including the Belt Company, to be placed in certain "dummy" companies with the fraudulent intent and purpose of preventing the proper-

ties being reached by the creditors of the railroad companies; that the Trust Company caused the Belt Company to enter into a pretended contract for the building of a certain link of railroad, which resulted in a loss of several hundred thousand dollars; that the contract for the construction in reality belonged to the Trust Company, and the resulting loss was its loss; that the Trust Company had charged up the loss to the Belt Company and was claiming the same as a liability in its favor against the Belt Company; that this action by the Trust Company was fraudulent in fact and in law; that the Trust Company had caused the Belt Company to transfer to it bonds, stocks and other property as collateral for various pretended claims which it fraudulently asserted to exist in its favor against the Belt Company; that the Trust Company fraudulently caused pretended notes to be given to it by the Belt Company as representing debts owing to it by the Belt Company; that the Trust Company had fraudulently appropriated to itself a large amount of the property of the Belt Company, consisting of stocks, bonds, and other securities; that the domination of the Trust Company over the Belt Company ceased in April, 1900.

The relief asked included: that the Trust Company be adjudged to hold the said stocks of various companies and certain bonds in trust for the creditors of the Belt Company; that receivers be appointed for the Belt Company with power to institute proceedings to recover the assets of that company; that an injunction issue restraining the Trust Company from disposing of the property held by it as alleged collateral to indebtedness of the Belt Company. Receivers were appointed for the Belt Company, and a restraining order was issued against the Trust Company.

On November 20, 1901, the receivers of the Belt Company filed an ancillary bill in the Cambria Company suit. The Trust Company was made one of the defendants. This
728 ancillary bill alleged largely the same facts as the Cambria Company bill, to-wit, the formation of corporations by the Trust Company and the domination of them, including the Belt Company; the retention by the Trust Company of proceeds of sale of the stocks and bonds of said companies under the fraudulent pretenses that it was retaining them for the payment of commissions and services; the causing by the Trust Company of the signing by the Belt Company of pretended promissory notes, payable to the Trust Company, and causing stocks and bonds to be delivered to it as collateral to the notes. It was further alleged that the

execution of the promissory notes and the delivery of the collateral were fraudulent and void.

The prayer of this ancillary bill asked for an accounting by the Trust Company as a trustee and agent for the Belt Company; that the notes be cancelled as fraudulent; and that the Trust Company be restrained from transferring the collateral securities.

March 22, 1905, an amended and supplemental ancillary bill was filed by the receivers of the Belt Company. This bill reiterated to a large extent the charges made in the two preceding bills. It also charged conversion by the Trust Company of property of the Belt Company; also that the Trust Company occupied a fiduciary relation to the Belt Company, and by reason thereof had no right to charge any sums as profits; that the Trust Company in pursuance of a fraudulent plan sold worthless securities to the Belt Company; that the Trust Company fraudulently made overcharges on its books against a subsidiary company of the Belt Company, which charges afterward became charges against the Belt Company; that the Trust Company made sales of stocks and bonds for the Belt Company and reported the same as made at less than the actual figures, thereby securing for itself a profit; that the Trust Company caused the Belt Company to declare and pay dividends when is was insolvent, and that the Trust Company as a stockholder in the Belt Company received such dividends; that the Trust Company caused the Union Terminal Company, whose stock was owned by the Belt Company, to issue bonds and deliver the same to the Belt Company contrary to the provisions of the mortgage in which the Trust Company was trustee; and further caused the Belt Company to deliver said bonds to the Trust Company, which company thereupon sold them and kept the proceeds, crediting the amount to the account of the Belt Company,—all in violation of the duties of said Trust Company as trustee under said mortgage;
729 that the Trust Company sold bonds belonging to the Belt Company, and fraudulently refused to account for the proceeds; that the Trust Company fraudulently appropriated several hundred shares of stock belonging to the Belt Company.

The prayer for relief in this amended ancillary bill was that the Trust Company account as trustee and as agent for the Belt Company; that the promissory notes of the Belt held by the Trust Company be found to have been fraudulently executed and for fraudulent purposes.

On the 2nd of July, 1906, the surviving receiver of the Belt Company filed a second amended and supplemental ancillary bill. This bill also contained charges against the Trust Company of dominating over the Belt Company and its subsidiary and allied corporations; of causing fraudulent execution of the promissory notes of the Belt Company held by the Trust Company; of fraudulent delivery of the collateral by the Belt Company to the Trust Company; of fraudulent appropriation of bonds in connection with the construction of the railroad of a company known as the Suburban Company; of appropriation and conversion to its own use by the Trust Company of stocks and bonds of the companies subsidiary to the Belt Company. The bill also alleged that the Trust Company occupied a fiduciary relation to said companies; and that any contracts providing for trustee fees for the Trust Company were unlawful; that the Trust Company sold stocks and bonds of the Belt Company and reported to the Belt Company amounts of sales at less figure that the actual sales, and retained the balance. The bill also reiterated the charges against the Trust Company of violation of its duties as trustee under the Union Terminal Company mortgage.

The prayer of this bill also was for an accounting by the Trust Company; that the promissory notes executed by the Belt Company and held by the Trust Company be declared fraudulent, and be cancelled; and that the Trust Company be restrained from disposing of the stocks and bonds held by it as alleged collateral to the promissory notes of the Belt Company.

Meanwhile, on February 27, 1905, the Southern Company filed an intervening petition in the Cambria Company suit;
and on May 1, 1905, it filed an amended intervening
730 petition. Among other things the amended petition alleged: the foreclosure suits of the several mortgages, heretofore mentioned, on property of the Belt Company or its subsidiary companies, and sale of the properties to the Southern Company December 31, 1901; the foreclosure of the mortgage on the Kansas City, Pitsburg & Gulf Railroad Company, and sale of the property to a committee acting for the Southern Company; that the Trust Company was either sole trustee or co-trustee under each of said mortgages; that the Trust Company had caused each of said companies to be formed, and thereafter dominated their affairs; that the Trust Company claimed to hold as collateral to an alleged indebtedness of the Belt Company to it, a large

amount of stocks and bonds of a number of companies which were subsidiary to the Belt Company; that these securities had been owned by the Belt Company; that they had become included in the mortgage of the Belt Company by reason of an after-acquired property clause; that at the foreclosure sale under that mortgage these securities had been acquired by the Southern Company; that the Trust Company as trustee under the mortgage made by the Belt Company did not in any degree or in any way carry out the duties imposed upon it as trustee in said mortgage, but exercised its powers and duties at trustee in said mortgage in its own interest and in violation of its trust; that the Trust Company had also violated its duties at trustee in the several mortgages of the subsidiary companies of the Belt Company and the Gulf Company by appropriating to itself as collateral to an alleged indebtedness of the Belt Company to it, large amounts of stock and bonds of said companies. The petition further alleged that the Trust Company as co-trustee nnder the mortgage of the Union Terminal Railroad Company (one of the companies allied with the Belt Company) wrongfully and fraudulently and contrary to the terms of the mortgage, caused a large amount of the bonds to be sold and the proceeds to be applied on the alleged indebtedness of the Belt Company to the Trust Company.

The prayer of this petition was that the Trust Company be required to account for and pay over to the Southern Company the value of the stocks and bonds which it had wrongfully appropriated as set forth in the petition.

To these various bills and petitions the Trust Company answered. It denied among other things, that it had caused the Belt Company and its allied or subsidiary com-
731 panies to be incorporated, or had dominated any of them; denied that it occupied any fiduciary relationship to the Belt Company or its allied or subsidiary companies, except that it had acted as trustee under mortgages executed by them; denied any wrongful or fraudulent action on its part, either as trustee or otherwise; alleged that the transactions between it and the Belt Company were shown upon the books of both companies, and that the books of the Trust Company had been repeatedly examined by the expert accountants of the Belt Company; admitted that it held collateral given to it by the Belt Company as security for the debts owed to it by that company; alleged that the collateral was given in good faith and to secure just debts evidenced by promissory notes and an open account, amounting to up-

wards of $300,000; denied that the securities held by it as collateral had become included in the Belt Company mortgage by virtue of the after-acquired property clause, or had been sold to the purchaser at the foreclosure sale under said mortgage, or had been acquired by the Southern Company; alleged that at the request of the Belt Company, it had acted as financial agent for several of the subsidiary companies, and sold their stocks and bonds and received compensation therefor, all the facts relative to which were known and approved by the officers of the respective companies and of the Belt Company; alleged that all financial transactions of the Trust Company with or for the Belt Company or its allied or subsidiary companies were fully and fairly accounted for and approved by the officers of those companies.

In its answer to the amended and supplemental ancillary bill of the receivers of the Belt Company, the Trust Company prayed for judgment against the Belt Company and its receivers on the indebtedness owing by the Belt Company; and prayed further that the court protect and enforce the interest of the Trust Company in and to the stocks, bonds, and other property held by it as collateral.

In its answer to the amended intervening petition of the Southern Company, the Trust Company also alleged that the Southern Company, by virtue of its acquirement of the properties of the Belt Company under the reorganization plan set out, had become liable for the debts of the Belt Company, including the debt owing to the Trust Company.

From the foregoing analysis of the pleadings it will be seen that among the issues raised were:

732 Whether the Trust Company had been guilty of fraud in its dealings with the Belt Company and with its allied and subsidiary companies;

Whether the Trust Company had occupied a fiduciary relation with said companies or any of them, except in so far as it had acted as trustee in several of the mortgages made by those companies; and if so, whether it had violated that relationship;

Whether the Trust Company, while acting as trustee in said mortgages or any of them, had violated its trust;

Whether the Belt Company was indebted to the Trust Company;

Whether the Trust Company was entitled to hold the collateral which it claimed had been pledged to it by the Belt Company in connection with the debt;

Whether the said collateral came under the mortgage of the Belt Company and had been acquired by the Southern Company through the foreclosure sale under that mortgage;

Whether the Southern Company was liable to the Trust Company for the indebtedness of the Belt Company.

These issues were first passed upon by the special master. He found as follows:

"No stockholder, has at any time objected to any of the transactions complained of in the bill."

"The transactions in dispute were open, not secret or concealed, and were either known to the stockholders, or could have been, if they had been at all diligent in trying to understand such transactions, which are spread with much explanatory detail, not only on the books of the Trust Company, but also on the books of the railway companies; and the very nature of the transactions, their magnitude and the long period of time over which they extended, tend thoroughly to negative the idea of ignorance on the part of any stockholders."

"The transactions now attacked in the bill, were expressly ratified by the stockholders, as shown by the minutes of the corporate meetings".

733 "The transactions in question are executed contracts, closed and consummated years before the original bill was filed, and, as the accounts between the Trust Company and these other companies were settled, from time to time, the Belt Company gave its notes for the balances due, and which notes were also paid off, from time to time."

"It is shown by the record that the book-keeping was full, complete and accurate as to all original entries, and otherwise, and that the accounts between the companies were regularly stated and audited each month by formal certificates exchanged by their respective auditors, and that the books tallied to a cent."

"The Belt in the transactions, which are now attacked, received therefrom certain benefits and advantages, which the complainants have never offered to return, and, in the nature of things, cannot return. The status quo cannot be restor-

ed, which fact, if true, becomes a most important one in the final determination of the issues involved in the bill, and, especially so, in the absence of fraudulent intent, or actual fraud, on the part of the Trust Company, which is not shown by the proofs in the record."

"The Trust Company did not dominate and control the Belt Company, or any of the other companies involved in this controversey, as claimed by complainants in their bill".

"* * the Trust Company was under no such duty to the Belt bondholders as would prohibit it from taking collateral security to secure an indebtedness to it from the Belt Company, nor was there any express convenant in the mortgage creating such duty, nor was there any such duty by implication of law."

The master held further that the Trust Company was entitled to hold all of the collateral mentioned in the Southern Company's petition in intervention; that the collateral did not become included under the Belt Company mortgage; and that the Southern Company had not acquired any right, title, or interest therein by virtue of the foreclosure sale under that mortgage.

The master recommended that the Cambria Company bill be dismissed for want of equity, and that the injunction restraining the Trust Company from disposing of its collateral be dissolved. The master recommended further that the second amended and supplemental ancillary bill of the receiver of the Belt Company be dismissed as without
734 equity, except as regards three small items of account, two of which had been admitted in the answer of the Trust Company. The master recommended further that the amended petition of intervention of the Southern Company be dismissed as being without either law or equity, except as to one paragraph in regard to certain lands standing in the name of the Central Improvement Company, one of the subsidiary companies; and that the Trust Company was entitled to hold and subject to the payment of the debt to it from the Belt Company all of the collateral mentioned. The master recommended further that the Southern Company be held not liable for the indebtedness of the Belt Company.

The trial court approved and confirmed the report of the special master, and entered a decree adjudging:

(a) That there was no equity in the bill of the Cambria Company, and that it be dismissed; and that the injunction issued in said cause against the Trust Company be dissolved;

(b) That the allegation in the ancillary bills of the receivers of the Belt Company as to the three items above mentioned were true and that the Belt Company should have credit therefor; that as to all of the other allegations in said bills, the bills were without equity and were dismissed;

(c) That the allegations of the Trust Company touching the indebtedness of the Belt Company to it were true, and that there was due the Trust Company from the Belt Company $639,658.86 with interest;

(d) That the Trust Company was entitled to subject all the securities pledged to it (setting them out as claimed by the Trust Company) to the debt owed by the Belt Company;

(e) That the Southern Company was entitled to a conveyeance from the Central Improvement Company of the lands standing in the name of that company;

(f) That the Southern Company was not liable for the debt of the Belt Company to the Trust Company.

Upon appeal, this court held with the trial court as to provisions of the decree set out in (a), (b), (c), and (d), supra; overruled the trial court as to provisions (e) and (f), supra; held further that the Trust Company as pledgee of
735 the stock of the Central Improvement Company had a right in the lands of the Central Improvement Company superior to the right of the Southern Company; and held further that the Southern Company was liable for the debt of the Belt Company to the Trust Company; and that the Trust Company was entitled to judgment against the Southern Company for $639,658.86 and interest,—the amount of the debt of the Belt Company to the Trust Company.

From the foregoing synopsis of the pleadings, findings, and decree in the litigation, it is clear that the charge that the Trust Company had committed fraud against the Belt Company was adjudged not true; the charge that the Trust Company had violated fiduciary relations with the Belt Company and its subsidiary companies was adjudged not true; the charge that the Trust Company had violated its duty as trustee under mortgages of the Belt Company and its subsidiary companies was adjudged not true. On the other hand, the claim of the Trust Company that the Belt Company was indebted to it in a large amount was adjudged true; the claim of the Trust Company that it held securities pledged by the Belt Company as collateral to the debt, and that it had a right to subject said securities to the payment

of the debt, was adjudged true; the claim of the Trust Company that the Southern Company by it acquirement of the assets of the Belt Company had become possessed of property which in equity constituted a fund for the payment of the creditors of the Belt Company, including the debt of the Trust Company, was adjudged true.

It may not be amiss at this point to note also that this court after the fullest consideration reached the conclusion that all of the foregoing bills, ancillary bills, and petitions against the Trust Company, were in reality sponsored by the Southern Company. This court characterized the Cambria Company suit as "baseless" and "unwarranted".

In reference to the existence of a trust fund for the payment of creditors of the Belt Company, which fund had been disclosed in the litigation, this court said (210 F. 703-708):

"Moreover, the property of the Belt Company was a trust fund. The stockholders of that company were trustees charged with the duty to apply that property to the payment of the claims of the trust company and of the other creditors of the Belt Company before they took to themselves
736 any share in or benefit therefrom. When the Southern Company took their stock and gave them $4,750,000 par value of its stocks and bonds for their interest in the property of the Belt Company, it stepped into their shoes and became a trustee for the creditors of the Belt Company with plenary notice that the interest of those creditors in the property was at least as much as the value of the stocks and bonds it was giving for the interest of the stockholders, for the rights of the creditors in the Belt property were prior and superior to those of the stockholders."

"If the Southern Company had been the owner of the bonds of the Belt Company only, and knowing the condition and indebtedness of the Belt Company, as it did, had paid to the stockholders of that company $475,000 to the exclusion of the creditors for a conveyance of its property by the Belt Company to the Southern Company, it could not have escaped liability to the creditors of that company for that amount. Much less can it do so when it became owner of nearly all the Belt Company's stock, and in equity a trustee for its creditors. Story's Equity Jurisprudence, Secs. 1261, 1262; Grenell v. Detroit Gas Co. 112 Mich. 70, 70 N. W. 413; Camden Interstate Ry. Co. v. Lee (Ky.) 84 S. W. 332, 333; Central of Georgia Ry. Co. v. Paul, 93 Fed. 883, 884, 35 C. C. A. 639; Luedecke v. Des Moines Cabinet Co., 140 Iowa 223, 118 N. W.

457, 458, 32 L. R. A. (N. S.) 616; Hibernia Ins. Co. v. St. Louis & N. O. Trans. Co. (C. C.) 13 Fed. 516, 119."

" • • the Southern Company became liable to the Trust Company to the extent of its claim for the value of the $4,750,000 of its stocks which it issued to the stockholders of the Belt Company to secure the property of the Belt Company and divert it from its creditors. Central of Georgia Ry. Co. v. Paul 93 Fed. 883, 884 35 C. C. A. 639; Camden Interstate Ry. Co. v. Lee, (Ky.) 84 S. W. 332 333."

" • • the transaction was a conveyance of the property of the Belt Company in fraud of creditors and a breach of trust by the Southern Company, which company, with full knowledge of all the facts, actively participated in the entire transaction and thereby acquired the property of the Belt Company, so that that property and the improvements the Southern Company has made thereon, free from the $1,000,000 Belt Mortgage and free from any charge for the
737 expenses which the Southern Company has made thereon, stands in its hands charged with a trust to pay the claim of the Trust Company against the Belt Company which the court may execute by a seizure and sale by its master or receiver. Railroad Co. v. Soutter, 80 U. S. (13 Wall.) 517, 522, 524, 20 L. Ed. 543; Guckenheimer v. Angevine, 81 N. Y. 394, 397; Globe v. O'Connor, 43 Neb. 49, 61 N. W. 131, 132."

Such was the character of the main litigation and the outcome.

We have not deemed it necessary for the purposes in hand to review such suits as the two unwarranted injunction suits brought by the Southern Company against Trust Company which were subordinate to the main litigation. They, however, furnish additional proof, if it were needed, of the vexatious character of the whole litigation. The history of those suits is to be found in 146 F. 337 and 171 F. 43.

We next turn to the consideration of the principles of law applicable to the foregoing facts and bearing upon the question: Whether the Trust Company is entitled to any costs "as between solicitor and client".

Jurisdiction of Courts of Equity Relative to Costs.

I. It is well established that the jurisdiction to award costs "as between solicitor and client" has for several centuries existed in the English Court of Chancery, and has been exercised in a variety of cases.

In Stallo v. Wagner, 245 F. 636, 638, the court in referring to the historical basis of the power of the equity courts in awarding costs, said:

"It was enacted by 17 Rich. II, c. 6, that the chancellor should award damages according to his discretion against persons bringing vexatious and unfounded suits in chancery. And 'damages,' as used in this statute, has been understood as including costs. Since the enactment of the statute the power of adjudging costs has become apparently so far inherent in the equity court as to be inseparable from the exercise of its judicial authority. It has frequently been said that the power of a court of equity to give costs is wholly inherent in the court independent of any statutory authority, and solely according to the conscience of the court.

738 "'This view,' it is said in Street's Federal Equity Practice, vol. 2, Sec. 983, 'is too radical to be considered orthordox, but it seems correct to say that the power of the equity court to allow costs, though originating in statute, has become a common principle and incident of its judicial action, so that the mere establishment of a court of equity and the endowment of it with judicial authority necessarily imports a power in such court to adjudge costs. This idea is fully exemplified in the history of the subject of costs as dealt with in the federal courts.' "

Whether such jurisdiction had its origin in the Statute 17 Rich. II, ch. 6, as some authorities hold, or existed before that time as inherent in the court, as others hold, is immaterial to our present inquiry, which is concerned only with the question of the existence of such jurisdiction at the time of the adoption of our United States Constitution.

In the leading case of Andrews v. Barnes, L. R. 39 Ch. Div. 133, decided in 1888, the court said.

"The jurisdiction of the Lord Chancellor in costs was essentially different from that at common law. 'The giving of costs in equity,' said Lord Hardwicke in Jones v. Coxeter, 2 Atk. 400, 'is entirely discretionary, and is not at all conformable to the rule at law.' 'Courts of Equity,' said the same great Judge in another case, 'have in all cases done it' (i. e., dealt with costs) 'not from any authority' i. e., as we understand, from any statutory or delegated authority)—'but from conscience, and arbitrio boni viri, as to the satisfaction on one side or other on account of vexation:' Corporation of Burford v. Lenthall, 2 Atk. 551.

"An examination of the older General Orders of the Court made, not under any statutory authority, but from the general and inherent authority of the Lord Chancellor, will shew that the Court exercised a most wide discretion not only as to the circumstances under which costs were to be awarded, but apparently as to the measure and fullness of the costs.

* * * * * * * *

"The records of the Court of Chancery during the last century shew that in numerous cases it has exercised the right of giving costs between attorney and client, or, to use the more recent language of the cases, between solicitor and client."

739 And after reviewing numerous authorities, the court further said:

"From this consideration of the earlier authorities we conclude that there was inherent in the Court of Chancery at the time of its abolition a general and discretionary power to award costs as between solicitor and client to a successful party, as and when the justice of the case might so require".

In Halsbury's Laws of England, Vol. 26, p. 798, the statement is made:

"The court has power by a special order to award costs as between solicitor and client to a successful party where it is exercising its equitable jurisdiction, but not where it is exercising its ordinary common law jurisdiction";

citing Andrews vs. Barnes, supra; Mordue vs. Palmer, L. R. 6 Ch. App. 22; Eady vs. Elsdon, 70 L. J. K. B. 701; Brown vs. Burdett, L. R. 40 Ch. Div. 244; Johnson vs. Telford, 3 Russ. 477; In re Brown, L. R. 4 Eq. Cas. 464; Eland vs. Medland, L. R. 41 Ch. Div. 476; Davies, Jenkins vs. Davis, (1891) 64 L. T. 824. See also cases cited in margin*.

The cases show, however, that costs "as between solicitor and client" have not been allowed by the English Chancery Court as a matter of course in equity cases. It is only in certain classes of cases, or when the peculiar facts warranted, that such costs have been allowed. A fair summary of the English cases in which such costs have been allowed, would, we think, include the following classes of cases:

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* Re Foster, L. R. 8 Q. B. Div. 515; Jones v. Coester, 2 Atk. 469; Corp. of Burford v. Lenthall, 2 Atk. 551; Simpson v. Malherbe, 4 Giff. 707; Ex parte Simpson, 18 Ves. Jr. 476; Dunsey v. Angove, 2 Ves. Jr. 304, 313; Turner v. Collins, L. R. 12 Eq. Cas. 438, s. c. L. R. 7 Ch. Div. 329; Forester v. Read, L. R. 6 Ch. App. 40; Pane v. Pane, L. R. 18 Ch. Div. 226, 230; Conrad v. Hanmer, 9 Beav. 3; Blest v. Brown, 4 DeGex & J. 367; Degge v. Colebrook, 1 Atk. 266, West's Ch. R. 681; Masserene v. Lyndon, 2 Brown, 291; Rennett v. Gunn, 1 Cox 253; Brutz v. Edmondson, 56 L. J. Ch. Div. 677; Edenborough v. The Archbishop of Canterbury, 2 Russ. 93; Daniel Ch. Pl. & Pr. (6th Am. Ed.) 1494, et seq.

A. Where gross charges of fraud and misconduct have been made and not sustained;

B. Where the main ground of the suit is false, unjust, vexatious, wanton, or oppressive, and so shown to be;

C. Where a fiduciary relation exists, such as trustee and cestui que trust, pledgor and pledgee, or principal and agent and the fiduciary is put to expense either in defending
740 an unfounded suit, or in administering or protecting and preserving the trust property or pledged property.

In all three classes of cases courts of equity have acted, as stated by Lord Hardwicke in Corp. of Burford vs. Lenthall, 2 Atk. 551, from "conscience and arbitrio boni viri". As expressed by Lord Chancellor Loughborough in Dungey vs. Angove, 2 Ves. Jr. 304, 313, the courts have taken this course "to do that which appertains to justice and that which appertains to example, and to vindicate the honor and justice of the court".

Similar jurisdiction has been held to exist, and has been exercised, in the state courts in the United States, especially in those states where the courts of equity have remained distinct from those of law. See Danbury vs. Robinson, 14 N. J. Eq. 324; Thome vs. Allen, 70 S. W. 410 (Ky.), s. c. 71 S. W. 431.

II. The United States Courts of Equity at the time of their creation became endowed with the powers, including that over costs, possessed by the English Chancery Court. See authorities cited in the margin**. They have exercised such power; and that power has never been taken from them.

And not only the equity jurisdiction of the federal courts has its basis in the jurisdiction of the English Chancery Court, but the practice of those courts, when not governed by statutes of the United States or by rules of the Supreme and lower courts, has a like basis. Rule 90 of the Old Equity Rules, promulgated by the Supreme Court in 1842 pursuant to R. S. 917, read as follows:

"In all cases, where the rules prescribed by this court, or by the Circuit Court, do not apply, the practice of the Circuit Court shall be regulated by the present practice of the

** 1 Pomeroy Eq. Juris. (3rd Ed.) Sec. 204, et seq.; Eaton on Equity (2nd Ed.) 17; 21 C. J. p. 27, et seq., Sec. 6; Pennsylvania v. Bridge Co., 13 How. 518, s. c. 18 How. 469; Fontain v. Ravenel, 17 How. 369; Payne v. Hook, 7 Wall. 425, 430; Russell v. Farley, 105 U. S. 433, 445; McConihay v. Wright, 121 U. S. 201; Scott v. Neely, 140 U. S. 106, 110; Mississippi Mills v. Cohn, 150 U. S. 202, 206; White v. Berry, 171 U. S. 366, 379; Waterman v. Canal, &c. Co., 215 U. S. 33, 43; Loring v. Marsh, 2 Cliff. 490, 493, Fed. Cas. #8516 Parker v. Bigler, Fed. Cas. #10,736; Costs in Civil Cases, 30 Fed. Cas. #18,394; Michie's Encyc. of U. S. Reports, Vol. 6, pp. 610-11.

High Court of Chancery in England, so far as the same may reasonably be applied consistently with the local circumstances and local convenience of the district where the court is held, not as positive rules, but as furnishing just analogies to regulate the practice."

741 See 21 C. J. p. 31; Russel vs. Farley, 105 U. S. 433, 437, 445; Smith vs. Burnham, Fed Cas. #13,018.

In Payne vs. Hook, 7 Wall. 425, 430, the court said:

"The equity jurisdiction conferred on the Federal courts is the same that the High Court of Chancery in England possesses".

In Fontain vs. Ravenel, 17 How. 369, 384, the court said:

"The courts of the United States cannot exercise any equity powers, except those conferred by acts of congress, and those judicial powers which the high court of chancery in England, acting under its judicial capacity as a court of equity, possessed and exercised, at the time of the formation of the constitution of the United States."

The distinction between the powers of Federal Court of Law and Equity is often adverted to by the courts. In the early case of Parker vs. Bigler, Fed. Cas. #10,726, Mr. Justice Grier, in disallowing certain items of costs in a law action, said:

"It is alleged that the act of 26th February, 1853, 'to regulate fees and costs,' proposes to define what shall be hereafter the fees or compensation to be allowed to attorneys, marshals, witnesses, jurors, commissioners, and printers, which shall be taxed and allowed, and not to define absolutely what expenses of trial may be recovered from the losing party as costs of suit. Hence it is contended that this charge is not excluded by the enumeration of persons whose fees are limited by this act, and the expense incurred for models being necessary for the information of the court and jury should be paid by the losing party, as part of the 'expensa litis.' This may be true in a court of chancery where the decree may include any expenses which have been necessarily incurred in the suit, for the information of the court and in order to a just decision of the cause. These may be imposed on either party or both as the conscience of the chancellor may dictate, yet, in courts of law no such discretion is given to the court."

In Pennsylvania vs. Bridge Co., 13 How. 518, 563, the court said:

"Chancery jurisdiction is conferred on the courts of the United States with the limitation 'that suits in equity shall not be sustained in either of the courts of the United States, in any case where plain, adequate, and complete remedy may be had at law.' The rules of the high court of chancery of England have been adopted by the courts of the United
742 States. And there is no other limitation to the exercise of a chancery jurisdiction by these courts, except the value of the matter in controversy, the residence or character of the parties, or a claim which arises under a law of the United States, and which has been decided against in a state court.

"In exercising this jurisdiction, the courts of the Union are not limited by the chancery system adopted by any State, and they exercise their functions in a State where no court of chancery has been established. The usages of the high court of chancery in England, whenever the jurisdiction is exercised, govern the proceedings. This may be said to be the common law of chancery, and since the organization of the government, it has been observed."

This case came before the Supreme Court a second time, on the question of taxation of costs. 18 How. 460. The court discussed the power of the Federal Equity Courts to award costs both as provided by the statutes of the United States and as inherent in the courts of equity. In the course of its opinion it said (p. 462):

"Original jurisdiction in equity, in a particular class of cases, conferred by the constitution on this court, has been interpreted to impose the duty to adjudicate according to such rules and principles as governed the action of the court of chancery in England, which administered equity at the time of the emigration of our ancestors, and down to the period when our constitution was formed. And when the constitution of the United States conferred that jurisdiction on this court, it cannot be construed to exclude the power possessed and constantly exercised by every court of equity then known, to use its discretion to award or refuse costs, as its judgment of the right of the case, in that particular, might require. The court entertains no doubt of its power to award costs, and deny the application to file a bill of review."

The costs awarded included expenses of taking testimony, expenses of surveys, examinations, and reports of an engineer. It is true that these expenses had been incurred by order of the court; but this fact emphasizes rather than throws doubt upon the power of the court over costs.

This case has been recognized and approved in the late case of Newton vs. Consolidated Gas. Co., 265 U. S. 78, 83, where the court used the following language:

743 "The allowance of costs in the federal courts rests not upon express statutory enactment by Congress, but upon usage long continued and confirmed by implication from provisions in many statutes. Ex parte Peterson, 253 U. S. 300, 316; and see Pennsylvania vs. Wheeling & Belmont Bridge Co., 18 How. 460."

In Ex parte Peterson, 253 U. S. 300, (a law case), the court considered the question of the power of the court over costs both in actions at law and in equity causes, and by analogy allowed as costs in the particular case the expense of an auditor, though no such item was authorized by statute of the United States or of the State of New York, where the action was tried. In its opinion the court said (pp. 316-317):

"The allowance of costs in the federal courts rests not upon express statutory enactment by Congress, but upon usage long continued and confirmed by implication from provisions in many statutes. Mr. Justice Woodbury in Hathaway vs. Roach, 2 Woodb. and M. 63; Mr. Justice Nelson in Costs in Civil Cases, 1 Blatchf. 652; The Baltimore, 8 Wall. 377. In Hathaway vs. Roach, p. 67, it is said to have been the usage of the federal courts 'to conform to the state laws as to costs, when no express provision has been made and is in force by any act of Congress in relation to any particular item, or when no general rule of court exists on this subject.' And in The Baltimore, pp. 390-391, this court stated that 'the costs taxed in the Circuit and District Courts were the same as were allowed at that time in the courts of the State, including such matters as travel and attendance of the parties, fees for copies of the case, and abstracts for the hearing, compensation for the services of referees, auditors, masters, and assessors, and many other matters not embraced in the fee bills, since passed by Congress.' Neither the Act of February 26, 1853, c. 80, 10 Stat. 161, Rev. Stats., Sec. 983, nor any later act of Congress or rule of court deals expressly or by implication with the subject of taxing as costs the expense of an auditor. The practice, if any, governing in this respect the courts of New York would, therefore, be followed in the federal courts. See Huntress vs. Town of Epsom, 15 Fed. Rep. 732. But, so far as appears, the preliminary hearing before an auditor in aid of jury trials is not a part of the judicial machinery of that State. The nearest analogy to it is the reference had in actions at law on long accounts as an substi-

tute for a jury trial. The expense of the compulsory reference in such actions is so taxable. Code Civ. Proc.,
744 Sec. 3256. As there is no statute, federal or state, and no rule of court excluding auditors' fees and the expense of his stenographer from the items taxable as costs, no reason appears why they may not be included, like other expenditures ordered by the court with a view to securing an intelligent consideration of a case."

See also Missouri vs. Illinois, 202 U. S. 598.

Many statutes and rules have been passed from time to time relative to costs in the Federal Equity Courts. An exhaustive review of them would serve no useful purpose at this time. A number of the earliest statutes and rules are reviewed in Costs in Civil Cases, Fed. Cas. #18,284; The Baltimore, 8 Wall. 377; Jordan vs. Agawam Woollen Co., Fed. Cas. #7516. Later provisions are to be found in the statute of 1853 (10 St. 161, Ch. 80, Sec. 1); also in R. S. Secs. 823, 824, 983, 984 (U. S. C. Tit. 28, Secs, 571, 572, 830, 831); and in New Equity Rules 20, 50, 51, 58, 59, 67, 68, 76.

These statutes and rules, however, are not the exclusive source of power in the Federal Equity Courts touching the matter of costs, including solicitor's fees. This is plainly apparent from the authorities. In Newton vs. Consolidated Gas Co., supra, the power of the court to allow as costs an item not covered by either statutes or rules was made to depend upon local custom. And a long line of cases exists where allowances in the way of counsel fees have been made, although such allowances were not covered by rules or by statutes.

The Appollon, 9 Wheat. 362, was a libel brought by the master of the French ship Appollon agninst the collector of the district of St. Mary's for damages on account of an alleged illegal seizure of ship and cargo. Various items of damages were recovered, including one for $500 for necessary counsel fees. In reference to this item the Supreme Court, speaking by Mr. Justice Story said (p. 379):

"The fifth item, allowing $500 as counsel fees, is, in our opinion, unexceptionable. It is the common course of the admiralty, to allow expenses of this nature, either in the shape of damages, or as part of the costs. The practice is very familiar on the prize side of the court; it is not less the law of the court in instance causes, it resting in sound discretion to allow or refuse the claim."

745 To the same effect see Canter vs. Insurance Companies, 3 Pet. 307. See also The Elizabeth Frith, Fed. Cas. #4361.

It is true that in The Baltimore, 8 Wall. 377, the opinion was expressed by Mr. Justice Clifford that after the passage of the Act of February 26, 1853, counsel fees, except as provided in that act, were not allowable as costs in admiralty; and in the course of his opinion he referred to the Appollon and Canter cases, and said (p. 393):

"Reference is made to two cases where counsel fees were allowed, but it is a sufficient answer to those cases to say, that they were decided before the act of Congress, under consideration was passed."

But the scope of this statement must be restricted to the particular class of cases under discussion, for the practice of allowing counsel fees as costs in proper cases was not abrogated by the Act of February 26, 1853.

In United States vs. Waters, 133 U. S. 208, 212, the court, speaking of this practice, said:

"Both before and since the enactment of the statute of 1853, courts in the exercise of their discretion have allowed counsel fees in many cases without question when reviewed by this court. In The Appollon, 9 Wheat. 362, 379, and in Canter vs. The American and Ocean Insurance Companies, 3 Pet. 307, 319, the allowance of counsel fees by the court below was affirmed by this court as a matter within the sound discretion of the court before whom the cause was tried; and those decisions were cited with approval in Elastic Fabrics Co. vs. Smith, 100 U. S. 110, and Paper Bag Cases, 105 U. S. 766, 772."

See also Ex parte Jaffray, Fed. Cas. #7170; Spaulding vs. Tucker, Fed. Cas. #13,221; Cuyler vs. Atlantic & N. C. R. Co., 132 F. 570.

The Act of February 26, 1853, covered party and party costs, but not solicitor and client costs. In Trustees vs. Greenough, 105 U. S. 527, 535, 536, the court said:

"The fee-bill is intended to regulate only those fees and costs which are strictly chargeable as between party and party, and not to regulate the fees of counsel and other expenses and charges as between solicitor and client, nor
746 the power of a court of equity, in cases of administration of funds under its control, to make such allowance to the parties out of the fund as justice and equity may

require. * * * And the act contains nothing which can be fairly construed to deprive the Court of Chancery of its long-established control over the costs and charges of the litigation, to be exercised as equity and justice may require, including proper allowances to those who have instituted proceedings for the benefit of a general fund."

And see 15 C. J. p. 20, Sec. 1; 5 Encyc, Pl. & Pr. pp. 224-225; In re Paschal, 10 Wall. 483, 493; Louisiana State Lottery Co. vs. Clark, 16 F. 20.

It is true that Federal Courts of Equity have refused to allow attorney's fees to be taxed as costs in many cases; among them the following may be cited: Arcambel vs. Wiseman, 3 Dall. 306; The Baltimore, 8 Wall. 377; Oelrichs vs. Spain, 15 Wall. 211; McIntosh vs. Ward, 159 F. 66; New York C. & H. R. Co. vs. Bank of Holly Springs, 195 F. 456; Leary vs. United States, 257 F. 246. But such refusals were based not upon any lack of power in the court, but because it was not deemed wise policy to allow attorney's fees to be taxed as costs in ordinary equity cases. There are also many cases in which Federal Courts of Law have refused allowance of costs "as between solicitor and client", but we have not considered them as apposite to the present inquiry. We think it may be safely stated, however, that whenever there have come before Federal Courts of Equity cases in which special facts showed that, in accordance with established principles of right and equity, costs "as between solicitor and client" ought to be allowed, the courts have not refused to make such allowances.

The most common classes of cases, though by no means exclusive, in which such cost allowances have been made in equity are: Foreclosures of mortgages, as illustrated by, Dodge vs. Tulleys, 144 U. S. 451; Meddaugh vs. Wilson, 151 U. S. 333; Cowdrey vs. Galveston, &c R. Co., 93 U. S. 352; Williams vs. Morgan, 111 U. S. 684; Phinizy vs. Augusta & K. R. Co., 98 F. 776; Fidelity Trust Co. vs. Hutchinson Chemical & Alkali Co., 221 F. 63 (CCA 8);

Receiverships, as illustrated by, Stuart vs. Boulware, 133 U. S. 78; Eames vs. H. B. Claflin Co., 231 F. 693; Presidio Mining Co. vs. Overton, 286 F. 848; J..C. Turner Lumber Co. vs. Toomer, 275 F. 678; City of New Orleans vs. Malone, 12 F (2d) 17;

747 Suits by stockholders to preserve the property rights of their corporation, as illustrated by, Cuyler vs. Atlantic & N. C. R. Co., supra; McCourt vs. Singers-Bigger, 145

F. 103 (CCA 8); Colley vs. Wolcott, 187 F. 595 (CCA 8); Thompson vs. Bomar, 258 F. 339 (CCA 8); Hutchinson Box &c Co. vs. Van Horn, 299 F. 424 (CCA 8); Hodgman vs. Atlantic Refining Co., 8 F. (2d) 777;

Suits by one or more creditors to preserve and bring into court for administration a fund in which they are interested as illustrated by, Trustees vs. Greenough, 105 U. S. 527; Central R., &c. Co. vs. Pettus, 113 U. S. 116; Harrison vs. Perea, 168 U. S. 311; Central Trust Co. vs. Ingersoll, 87 F. 427; Burden Central, &c Co. vs. Ferris, &c. Co., 87 F. 810; Central Trust Co. vs. U. S. Light & Heat Co., 233 F. 420; Muskogen Boiler Works vs. Tenn. Valley I. & R. Co., 274 F. 836;

Certain classes of proceedings in connection with bankruptcy matters, as illustrated by, Ex parte Jaffray, supra; Randolph vs. Scruggs, 190 U. S. 533; Beach vs. Macon Grocery Co., 125 F. 513; Receivers of Vir. Iron, Coal & Coke Co. vs. Staake, 133 F. 717; In re Lacov, 142 F. 960; In re Schocket, 177 F. 583; In re Stewart, 179 F. 222; In re Wentworth Lunch Co., 191 F. 821; In re J. F. Pierson Jr. & Co., 225 F. 889; Bramble vs. Brett, 230 F. 385 (CCA 8).

Closely akin to the foregoing classes of cases are those involving allowances made to a pledgee for expenses and attorney's fees in preserving and defending the pledged property. In 31 Cyc. p. 826, the author states the rule as follows:

"The pledgee has a lien on the property for any expenses, including the attorney's fees, reasonably incurred by him in keeping and caring for the property pledged, protecting it against liens, taxes, and assessments, or otherwise protecting the pledgor's rights, in making sale for the enforcement of the pledge, in collecting choses in action, and other expenses incurred in rendering the pledged property available for the payment of his debt, although not for any expenses incurred by reason of his own wrongful act."

And see Jones on Collateral Securities (3rd Ed.) Sec. 400; Raley vs. Ross, 59 Ga. 862; Planters' Rice-Mill Co. vs. Merchants' Nat. Bank, 78 Ga. 574; Hurst vs. Coley, 22 F. 183; Gregory vs. Pike, 67 F. 837; Danbury vs. Robinson, supra;
Ballingall vs. Hunsberger, 16 Pa. Sup. Ct. 117; Ely-
748 Walker Dry Goods Co. vs. Colbert, 124 S. W. 705 (Tex. Civ. App.); Parker vs. Watkins, Johnson's Reports (Eng.) 133, 137.

The case of Spring Garden Ins. Co. vs. Amusement Syndicate Co., 178 F. 519 (CCA 8), though not falling under any

of the foregoing classes, is interesting and instructive. Actions had been commenced by the appellee in the state court of Kansas against several insurance companies on fire insurance policies. Several of the insurance companies removed their cases to the federal court; and thereupon two of the companies filed therein a bill in equity making as parties defendant all of the other insurance companies and the insured, and setting up that an accounting and contribution was necessary if liability should be found to exist. The other insurance companies by answers and cross bills made similar allegations. The insured by cross bill set up the same facts that it had set up in the complaints in the state court. Recovery was had by the insured. A statute of Kansas provided that in suits on insurance policies a reasonable attorney's fee could be recovered as part of the costs. This court not only allowed as costs a reasonable attorney's fee, but went further and allowed the costs in the actions pending in the state court. The court said (p. 534):

"The insurance companies invoked the aid of a court of equity and in courts of equity the payment of costs by the respective parties is a proper matter of equitable distribution."

It is true that in most of the cases where costs "as between solicitor and client" have been allowed, there has been a fund in court out of which the allowance was ordered paid. But this fact has not conditioned the jurisdiction of the court to make such allowance. There is no statute or rule to that effect, nor has such been the practice. It does not appear that there was any fund in court in Pennsylvania vs. Bridge Co., supra, nor in Spring Garden Ins. Co. vs. Amusement Syndicate Co., supra, nor in In re Schocket, supra. In Beach vs. Macon Grocery Co., supra, in In re Lacov, supra, and in In re Wentworth Lunch Co., supra, although there was a fund, yet costs and expenses of a receivership were ordered paid by the losing parties. And see Burnrite Coal Co. vs. Riggs, 274 U. S. 208.

Furthermore, in cases where a trustee has been brought into court by a cestui que trust upon charges of mal-administration which have proved to be unfounded, costs
749 "as between solicitor and client" have been allowed the trustee, though there has been no fund in court. Perry on Trusts (6th Ed.) Sec. 894, states as follows:

"The general rule is, that trustees shall have their costs either out of the trust fund, or from the cestuis que trust personally. If there is a fund within the control of the court,

they may have their costs as between solicitor and client. Where there is no fund within control of the court, if the cestuis que trust bring the trustees before it to obtain a direction as to the rights of the parties, or the mode of administration, and the trustees are free from all blame or fault, they are entitled to costs against the cestuis que trust personally, to be taxed as between solicitor and client. The reason involved in the rule is this: trustees have no beneficial interest in the trust property. They hold it for the accommodation and benefit of others. If they perform their duties faithfully and are guilty of no unjust, improper, or oppressive conduct, they ought not in justice and good conscience to be put to any expense out of their own moneys. If, therefore, they are brought before the court without blame on their part, they should be reimbursed all the expenses that they incur, and allowed their costs as between solicitor and client for this purpose."

The Case at Bar.

From the foregoing authorities and many others which might be cited, we think it is clearly established that the Federal Courts of Equity have jurisdiction to allow in proper cases costs "as between solicitor and client"; and that such allowances have been made in many cases of various classes whenever the special facts warranted.

We are also of the opinion that the facts in the case at bar make it one calling for the application of the rules and principles that govern courts of equity in awarding such allowances. We have here a case where the Trust Company, a pledgee of securities as collateral to the debt of the Belt Company, was brought into court by a third party and compelled to litigate not only the validity and amount of its debt, but the title of the pledgor to the pledged property. At great expense the Trust Company established the validity and amount of its claim, and also established the title of the Belt Company to the pledged property at the time of the pledge, and its own right to subject the pledged property to the payment of the Belt Company's debt. The pledged property is in the constructive possession of the court.

750 Again, we have here a case in which the Trust Company, which had been a trustee under the mortgage of the Union Terminal Railroad Company, one of the subsidiary companies of the Belt Company, was brought into court by the Southern Company, successor in interest of the cestui que trust, and charged with gross and fraudulent violation of its duties as such trustee; and damages were

sought against it in the sum of $773,000. Other charges of violation of duty as trustee were made by the Southern Company against the Trust Company. At great expense the Trust Company met and answered these charges. They were found without merit and baseless.

Again, we have here a case in which the Trust Company, a creditor of the Belt Company, in the course of the litigation uncovered and brought into the constructive possession of the court a fund from which creditors of the Belt Company were entitled to be paid. That fund was represented by the amount which the Southern Company had paid to the stockholders of the Belt Company for their stock pursuant to the reorganization plan. It is true that in the suit in which this fund was uncovered the Trust Company was not a party plaintiff in its own behalf and in behalf of other creditors of the Belt Company. But we think under the peculiar circumstances of the case this can make no difference. The Cambria Company, a creditor of the Belt Company, had brought a suit, in form of a creditor's bill, against the Belt Company, and had made the Trust Company, which was also a creditor of the Belt Company, a party to the suit. If the Cambria Company had uncovered the fund which this court afterwards held was a trust fund for the payment of the creditors of the Belt Company, it cannot be doubted that the Cambria Company would have been entitled for so doing to an allowance, in the way of costs "as between solicitor and client". But early in the litigation the Cambria Company voluntarily ceased to be a factor, so far as concerned any efforts to establish a fund for the payment of the Belt Company creditors. It remained for the Trust Company by its own unaided efforts, and in the face of the most strenuous opposition, to establish that trust fund. Other creditors by appropriate action on their part might have participated in that fund; and if astute action has been exercised in paying off other creditors and in thus isolating the Trust
751 Company, such action cannot avail to destroy the equitable right of that company to some compensation for its services in this matter.

In view of the state of the record, the case must be sent back to the trial court to make the proper allowances for costs "as between solicitor and client". The special master's report has been made. Numerous exceptions have been filed thereto by both parties. Doubtless these will have to be passed upon. We see no necessity for the taking of further testimony. The amounts to be allowed are not controlled by what the Trust Company actually expended, and

may vary widely therefrom. The allowances should be such as, in view of the facts and circumstances proved in this case which authorize them, will be reasonable and just.

The decree is reversed with instructions for further proceedings in accordance with the views herein expressed.

The foregoing opinion was concurred in by Judge Sanborn, but not filed until after his death.

Filed May 18, 1928.

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752 (Decree.)

United States Circuit Court of Appeals, Eighth Circuit.

May Term, 1928.

Friday, May 18, 1928.

Guardian Trust Company, Henry C. Flower, Receiver, Appellant,

No. 7784. vs.

The Kansas City Southern Railway Company.

Appeal from the District Court of the United States for the Western District of Missouri.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Missouri, and was argued by counsel.

On Consideration Whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and the same is hereby, reversed with costs; and the Guardian Trust Company, Henry C. Flower, Receiver, have and recover against The Kansas City Southern Railway Company the sum of ..... Dollars for its costs in this behalf expended and have execution therefor.

It is further ordered by this Court that this cause, be, and it is hereby, remanded to the said District Court with instructions for further proceedings in accordance with the views expressed in the opinion of this Court.

May 18, 1928.

IN THE

United States Circuit Court of Appeals

EIGHTH CIRCUIT.

GUARDIAN TRUST COMPANY, Appellant, *v.* THE KANSAS CITY SOUTHERN RAILWAY COMPANY, Appellee.	No. 7784.

MOTION OF APPELLEE FOR A REHEARING.

Comes now the appellee, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, herein referred to as the "Southern Company," and respectfully prays the Court to grant a rehearing in this cause, and briefly and distinctly states its grounds, supported by certificate of counsel, as follows:

(a) So much of the opinion in this case as characterizes the entire litigation as of a vexatious character is a grave and serious imputation. We confidently assert that there is no evidence in the record to support the charge. It is doubly unjustified and unwarranted because of the wrongful denial of our application in the lower court to introduce evidence, both oral and documentary, not only to refute any charge or insinuation of bad faith, but affirmatively to prove the good faith of the entire litigation on our part from beginning to end.

(b) The effect of the opinion of the Court in this case, authorizing the taxation of "costs as between solicitor and client" in the sum of some $300,000, against the Southern Company, is, in our judgment, to revolutionize the practice in Federal courts of equity, established since the beginning of

our Government, with respect to the taxation of costs, and to deny or penalize free access to our courts, so essential to the public welfare, and so thoroughly a part of our theory of government.

(c) Furthermore, the opinion is, we respectfully submit, in direct conflict with the opinion and mandate of the Supreme Court in this case (240 U. S. 166), which are exclusively for that court to construe.

These, we respectfully submit, are grave and serious matters, and not only justify, but imperatively demand, an appeal to this Court for a reconsideration of its conclusions.

Summary of the Court's Conclusions.

This Court has, in effect, imported bodily into our jurisdiction the English practice of the taxation of costs as between solicitor and client in the following classes of cases:

A. Where gross charges of fraud and misconduct have been made and not sustained;

B. Where the main ground of the suit is false, unjust, vexatious, wanton, or oppressive, and so shown to be;

C. Where a fiduciary relation exists, such as trustee and *cestui que trust,* pledgor and pledgee, or principal and agent, and the fiduciary is put to expense either in defending an unfounded suit, or in administering or protecting and preserving the trust property or pledged property.

With these alien and unnaturalized principles as a guide, the Court, after making the astounding statement, at page 15 of its opinion, concerning what it is pleased to call "the vexatious character of the whole litigation," seeks to apply these principles to the case at bar, pointing, for its justification, to three facts, which may be summarized as follows:

1. The Trust Company was compelled to litigate the validity and amount of its debt, and also the title of the pledgor to the pledged property.

2. The Trust Company had been a trustee under the mortgage of the Union Terminal Company, and was charged with a violation of its duties as such trustee.

3. The Trust Company brought into the constructive possession of the Court a fund from which creditors of the Belt Company were entitled to be paid.

These facts we are told in the opinion, justify the imposition upon the Southern Company of the enormous amount of attorneys' fees paid by the Trust Company covering the *entire period* of this litigation, from its institution in 1900 to the decision of the Supreme Court in 1916, and perhaps down to this date.

Summary of Our Objections to the Court's Conclusions.

We desire to protest as vigorously as lies within our power against the Court's wholly unwarranted imputation of bad faith in initiating and conducting this litigation, for the reason that if the Court's finding stands, we will not only have been convicted without evidence, but will also have been denied the right to introduce evidence, in our own behalf, upon the very issue in respect of which we have been convicted.

We also desire to protest as vigorously as lies within our power against the conclusion reached by the Court to penalize the Southern Company, through a resort to the English doctrine of taxation of costs as between solicitor and client, for all the expense of the Trust Company for attorneys' fees and other items during the entire litigation, from beginning to end. We regard this question as foreclosed by repeated decisions of the Supreme Court. We consider it wholly unwarranted under the opinion and mandate of the Supreme Court in this case. We contend that it is one of the fundamental principles of our Government that every one is entitled to free access to the courts, and that this right would cease to exist if an intending litigant were threatened and menaced with punishment of this character if he fails, perhaps through no fault of his own, rightly to anticipate the decision which some court, no matter how able, may ultimately reach as to the merits of his case.

I.

The statement in the opinion that the entire litigation was vexatious, is entirely unwarranted for the reasons, first, it is wholly unsupported by the record; secondly, it is in conflict with the opinion and mandate of the Supreme Court in this case (240 U. S. 166); thirdly, the record, as it stands, shows affirmatively the complete good faith of the Southern Company and the others associated with it during the entire litigation; and fourthly, the Southern Company was wrongfully denied the right to introduce evidence in its own behalf upon that issue.

It is deeply to be regretted that the Court has felt impelled to characterize "the whole litigation" as of a "vexatious character." We desire to say, with the utmost respect and, at the same time, with the greatest earnestness, that we feel that this accusation is wholly unsupported by the testimony; most unfair to past and present counsel, as well as to the parties, and prejudicial in the highest degree. We desire to discuss the matter with becoming moderation and, at the same time, with a frankness and candor which the circumstances seem to justify.

Several facts, which are unquestioned and uncontroverted, stand out in striking challenge to this extraordinary declaration of the Court, which point out conclusively and unerringly, as we believe, the error into which the Court has fallen, due, doubtless, to the great length of this litigation, with its vast accumulation of pleadings, issues, testimony, briefs, and collateral matters.

First. We contend, with complete confidence in the contention, that neither the special master, the lower court, this Court, nor the Supreme Court has held that the whole litigation, or any part of it, was trivial, insincere or vexatious. Nowhere in the entire litigation has that issue been made. It was sought to be made in this Court at the reargument in 1913, but this Court declined to entertain it. Nowhere has the Southern Company or the Belt Company and its receivers

had an opportunity to meet an issue of this character by the introduction of testimony, or otherwise. No evidence has, in fact, been introduced by any one upon this subject. There is nothing whatsoever in the record as it now stands, we earnestly insist, to warrant or justify a finding that the entire litigation was not in perfect good faith.

Secondly. The opinion of the Supreme Court in this case and its mandate (Rec. 465), which superseded the opinion and mandate of this Court (*First National Bank* v. *Chicago Trust Co.*, 207 U. S. 61, 66), contains no intimation that the litigation, or any part of it, was unjustified or unwarranted, and they, furthermore, constitute a direction to the district court to tax costs only as between party and party.

Thirdly. The record, as it stands, affirmatively shows the good faith of the Southern Company and those associated with it on its side of the litigation, and this will be pointed out in due course.

Fourthly. The lower court in its first opinion, in 1923 (Rec. 691, 699), erroneously said that this Court had found that the Cambria suit was wholly baseless and unwarranted. This was the first time that any court had ever intimated that the good faith of the Southern Company or any of those associated on its side of the litigation was questioned, and the intimation was entirely erroneous, as we shall point out. Thereupon the Southern Company, in December, 1923 (Rec. 33) sought to file in the lower court a petition "for leave to introduce testimony proving that this litigation was instituted and conducted on the part of each of the complainants in entire good faith"; and this petition was wrongfully denied by the lower court on the same day on which it was presented.

This petition was signed by four counsel who are officers of this Court, and verified by one of them. It sets out in detail the history of the institution and conduct of this litigation, from beginning to end, and asks leave to make proof, by oral and documentary evidence, of each and every statement therein contained. This petition is printed as Appendix A to this brief. Our earnest prayer is that the Court will read this petition from beginning to end. We say with the greatest confidence that no one can read it without reaching

the conclusion, *first*, that if the facts therein stated are true, then the entire litigation was instituted and conducted to its end in the utmost good faith, and that each and every step taken therein by the complainants and intervener was fully justified; and, *secondly*, that the petition itself, signed by reputable counsel, and verified by an officer of this Court, was sufficient to challenge the attention of the lower court and imperatively to require a judicial inquiry to ascertain if the facts offered to be proven could be established in due and orderly course of procedure; and that a denial of the petition was a grave and serious injustice. It is quite likely that this error would have been rectified later by the lower court, but for its revised opinion, in 1926 (Rec. 704), in view of which the investigation sought by the petition became wholly unnecessary.

The net result is that this Court has made a finding that the entire litigation was vexatious, not only in conflict with the opinion of the Supreme Court, but without any issue made or testimony taken thereon; and, further, as we shall presently show, without any support whatsoever in the record as it stands; and, at the same time, and almost in the same breath, the Court has wrongfully denied to the Southern Company an opportunity to make an issue of its good faith and to introduce testimony in support of it.

Our confidence in and respect for the Court makes it unnecessary to argue that if we are correct in any of the foregoing statements, the charge of instituting and continuing vexatious litigation will be at once withdrawn.

The litigation which occurred after the final decree of June, 1910.

A "vexatious suit" is thus defined in *Bouvier's Law Dictionary*, Rawle's Third Edition, Vol. 3, p. 3399: "A suit which has been instituted maliciously, and without probable cause, whereby a damage has ensued to the defendant."

Bearing this definition in mind, we will, for the sake of clarity and to avoid confusion, first take up the course of the litigation following the rendition of the final decree, in June, 1910. This covers the period when a large part of the Trust

Company's expenses for counsel fees and other items was incurred, and during which the litigation was carried on, upon the Trust Company's own initiative. The injustice of imputing to the Southern Company any improper motives in connection with this matter is so glaring as to challenge at once the attention of the Court. Later we will trace in a similar manner the history of the litigation from the beginning to the decree of June, 1910, for the purpose of showing that there is not the slightest evidence of bad faith or improper motive in its institution and prosecution.

The only party that appealed from the decree of June, 1910, was the Trust Company; and substantially the only issue raised by it on its appeal to this Court, and subsequently by us on our appeal to the Supreme Court, was the question of the liability of the Southern Company for the debt of the Belt Company. The Central Improvement Company matter was incidental to this issue. If the Southern Company was required to pay the Belt Company's debt, that automatically decided the Central Improvement Co. matter. *The liability issue was one that the Trust Company itself had injected into the case in 1905.* If the Trust Company had refrained from introducing this issue into the case, its appeal would have been limited to the comparatively unimportant item of the lands of the Central Improvement Company.

It seems to us unthinkable that the Trust Company's appeal to this Court, substantially for the purpose of determining the liability issue, or our appeal from this Court to the Supreme Court upon the same issue, can be characterized as vexatious on our part. Obviously, no one will be heard to urge that the Southern Company should have confessed error in the appeal to this Court, or that it should have refrained from taking the appeal from this Court to the Supreme Court.

It should be wholly unnecessary for us to argue the good faith on our side of this litigation following the decree of the lower court. But what are the facts?

(a) The lower court decided the liability issue in favor of the Southern Company, and also awarded it the Central Improvement Company lands. Is there any shadow of reason for the claim that the Southern Company was vexatious in

asserting these claims in the lower court, in securing the decree of that court sustaining the validity of its claim, or in seeking, upon the Trust Company's appeal to this Court, to sustain and retain its position?

The decree of the lower court, in favor of the Southern Company upon these two issues, in and of itself, effectively dispels and refutes any imputation of bad faith or improper motives. It is said in *Crescent City* v. *Butchers' Union*, 120 U. S. 141: . . . "the judgment or decree of a court having jurisdiction of the parties and of the subject matter, in favor of the plaintiff, is sufficient evidence of probable cause for its institution, although subsequently reversed by an appellate tribunal." The decree of the lower court was for the Southern Company, and that effectively disproves any charge that it was a vexatious suit, even though the judgment was reversed by this Court.

If the unthinkable intimation or suggestion should be made (nowhere has it been made), that the lower court was actuated by improper motives in thus rendering its decree, and that these motives are to be imputed to the Southern Company, the case just cited gives the answer, in the following language (p. 159):

> . . . It is equally true and equally well settled in the foundations of the law that neither misconduct nor demerit can be imputed to the court itself. It is an invincible presumption of the law that the judicial tribunal, acting within its jurisdiction, has acted impartially and honestly.

If there were nothing more in the case, the decree of the lower court in favor of the Southern Company, is a complete and sufficient justification for all that the Southern Company did following its entry in June, 1910. But there is much more.

(b) This Court handed down its first opinion (201 Fed. 811) in October, 1912. There was no suggestion in it that the matters decided were trivial or lacking in substantial merit. On the contrary, this Court, realizing the difficult nature of the issues involved, and being desirous of affording the fullest opportunity to test its conclusions, adopted the unusual procedure of permitting a reargument of the entire

case in January, 1913. After nearly a year's deliberation, it handed down its second opinion. Here, again, as we shall presently show, there was no finding that the litigation was frivolous or vexatious. True, it said in its opinion that the averment that the Belt Company was not indebted to the Trust Company "has been *adjudged* untrue," and that "it has *become* clear that the Cambria Company has no cause of action against the Trust Company." But this is quite another matter, and is discussed later. The fact that this Court permitted the reargument ought to be sufficient evidence that it regarded the issues as serious, important and difficult. It is not in the habit of granting rehearings where litigation appears on its face to be malicious and without probable cause.

(c) The Southern Company appealed from this Court to the Supreme Court. The Trust Company filed a motion to dismiss. The Southern Company countered with an application for certiorari.

The Supreme Court held that the nature of the case was such that if it should appear that an appeal did not lie, the writ of certiorari would be granted, saying:

> The motion to dismiss is hence postponed to the hearing on the merits; and, *being of opinion that the nature of the case is such as to authorize the granting of the writ of certiorari which is applied for,* in the event it develops on the hearing there is no jurisdiction to review the same, the application for the writ of certiorari is therefore also postponed to the hearing.

It is unnecessary to point out that the Supreme Court, particularly at that time—in May, 1914—issued its writs of certiorari very sparingly, and only in cases where grave questions were involved or where the public interest was directly affected. It did not issue its writ to review cases utterly lacking in merit, or of a vexatious character.

(d) Finally, the case was heard and decided in the Supreme Court, and the decree of this Court was affirmed. The Chief Justice and one of the Associate Justices dissented, as appears from the following statement (240 U. S. 166, 178):

> The Chief Justice and Mr. Justice Van Devanter are of opinion that, upon the finding of the Master, the decree should be reversed, and therefore dissent.

Two Justices of the Supreme Court felt that the case of the Southern Company was a meritorious one. Surely, there is no necessity for the Southern Company to apologize for advocating a cause that received their support. To stigmatize such litigation as "vexatious" involves processes which we fail to understand.

The two injunction suits.

We desire to make a brief reference to the two injunction suits, reported in 146 Fed. 337 and 171 Fed. 43. In the Court's opinion (p. 15), they are referred to as "the two unwarranted injunction suits"; and it is added that "they furnish additional proof, if it were needed, of the vexatious character of the whole litigation."

We are prepared not only to argue, but to demonstrate, that the injunction suits were neither unwarranted nor are they additional proof, or proof in any degree, that the entire litigation, or any part of it, was vexatious.

(a) Both injunctions were duly granted by the District Court of the United States for the Western District of Missouri, in a case of which that Court had jurisdiction, both of the subject-matter and of the parties. The injunctions were granted only after the Trust Company had been accorded a full hearing. One was granted by Honorable John F. Philips, District Judge for the Western District of Missouri, and the other by Honorable Smith McPherson, District Judge for Iowa. In both cases it was the court, in the exercise of its judicial functions, after hearing in due and orderly course, that granted the injunctions. True, the injunctions were afterwards reversed by this Court. But the action of the court in granting the injunctions, applying the rule of *Crescent City* v. *Butchers' Union*, 120 U. S. 14, "is sufficient evidence of probable cause for its institution, although subsequently reversed by an appellate tribunal." To characterize the injunctions as vexatious and unfounded is to impute misconduct and demerit to the court itself, in defiance of the "invincible presumption of the law that the judicial tribunal, acting within

its jurisdiction, has acted impartially and honestly." This should be a complete answer to the Court's criticism of the injunction suits; but there is another answer, which we now proceed to state.

(b) The injunction suits were concededly ancillary to the Cambria suit, in which the jurisdiction of the Federal Court was founded on diversity of citizenship. The Southern Company claimed, as ground for its injunction, that the Federal Court first acquired jurisdiction of the controversy and the parties thereto, and that the Trust Company could not deprive the Southern Company of its right to such an adjudication in the Federal Court by bringing a subsequent suit in the State Court to obtain an adjudication by the latter court of the same controversy involved in the proceedings in the Federal Court. The district court granted the injunctions, and they were reversed in this Court, in 1906 and 1909, respectively.

But the principles of law for which the Southern Company contended unsuccessfully in this Court in those two cases were, we respectfully submit, fully and completely adopted by this Court in 1921, in *Burke Construction Co.* v. *Kline,* 271 Fed. 605. It is there held that where a defendant, in a suit in a Federal Court whose jurisdiction is based on a diversity of citizenship, thereafter brought an action in the State Court on the same controversy, the Federal Court can protect its jurisdiction, and plaintiff's constitutional right to have the cause determined in the Federal Court, by enjoining the proceedings in the State Court pending the determination in the Federal Court. There, the action in the Federal Court was *in personam,* involving the respective liabilities of parties to a contract. The subsequent action in the State Court involved the same subject-matter. This Court held that the action in the State Court should be enjoined, saying (p. 611):

> When a citizen of one state, in the exercise of the right granted to him by the Constitution and the acts of Congress to an adjudication of a controversy judicable in a Federal Court between him and a citizen of another state, brings a suit *in personam* or *in rem* against the latter in the proper Federal Court to obtain the adjudication of that controversy by that court, and that court first acquires jurisdiction of that controversy and

> of the parties thereto, and the plaintiff therein persistently demands the adjudication of the controversy by the Federal Court, the defendant in that suit may not deprive the plaintiff of his constitutional right to such an adjudication by the Federal Court, or of the enforcement thereof by that court, by bringing a subsequent suit in a State Court against the plaintiff in the Federal Court or against him and others to obtain an adjudication by the latter court of the same controversy or of that controversy and of other controversies, or by any other action or proceedings such a defendant may take.

It is entirely clear, we respectfully submit, that if, in 1906 and 1909, when this Court decided the two injunction suits, it had taken the view of the law stated in the *Burke* case, the injunction suits must necessarily have been affirmed, instead of reversed. It is true that the *Burke* case was afterwards reversed by the Supreme Court (260 U. S. 226), but that only serves to emphasize the difficult nature of the questions involved, and the unfairness of penalizing parties because their counsel may be unable to predict with absolute certainty what view an appellate court will take in so delicate a matter as the dividing line between Federal and State jurisdiction. If the injunction suits had been affirmed in this Court, as, for reasons above stated, they might well have been, it would never have occurred to any one to condemn them as vexatious. Naturally, the Southern Company could not know in advance of an adjudication in this Court, that the rule, afterwards stated in the *Burke* case, would not be applied in its case.

The two injunction suits merely emphasize a situation which occurs in everyday practice of the law, when one party feels that his chances are best in a Federal Court, under the rules and decisions that obtain there, and the other party feels that his client will fare best in the State Court, under its rules and decisions. Each one strives to have the case determined in the jurisdiction of his preference. The Southern Company sought an adjudication in the Federal Court; and the Trust Company was striving just as hard to secure an adjudication of the cases it had brought in the State Court. Each party was well within its rights in seeking the forum of its preference.

Surely, this Court will be the last one to condemn a litigant or his counsel with a charge of vexatious litigation merely because an appellate court may disagree with a lower court with respect to certain difficult questions of law; and this is especially true where the appellate court may fairly be said to have entertained different views of the law at different times on the same subject.

The litigation from the beginning up to the decree of June, 1910.

Having now dealt with the course of the litigation from the date of the decree of the lower court—a period which is a part of "the whole litigation" characterized as "vexatious" by this Court—and having, we believe, completely demonstrated the entire freedom of the Southern Company from any criticism whatsoever with respect thereto, we go back to the institution of the action, in 1900, and bring it down to the date of the final decree, in 1910, for the purpose of showing that from its inception to the final decree, there was no just cause for criticism, and that there are no facts or circumstances which justify the Court's wholesale condemnation of the motives and purposes prompting the litigation.

The names of Louis C. Krauthoff and Frank Hagerman are signed to the bill of the Cambria Company, filed in September, 1900, and it is verified by the latter. The name of Thomas R. Morrow is signed as counsel to the ancillary bill of the Belt Company and its receivers, filed in 1901. These three gentlemen, in their lifetime, were accomplished and distinguished officers of this Court, and stood foremost among the leaders of the bar of the State of Missouri. As is well known to some of the members of this Court, they were men of unquestioned integrity, and deserved and received the confidence and respect of both bench and bar. There is a strong presumption, which this Court might very properly indulge, that lawyers of ability, character and standing, such as these gentlemen were, did not institute this action for purposes of vexation, or, reverting to the definition of a "vexatious suit," given above, "maliciously and without probable cause." To indulge such a presumption of honesty and

upright conduct is but a small tribute to the memory of honorable and distinguished members of the Bar and officers of this Court. If, at this late day, this Court, is to impute unworthy and dishonorable motives to them, it should only be after the formality of a hearing, where those who may desire to speak for them, may be accorded an opportunity so to do, and after the introduction of testimony so cogent and compelling as to lead irresistibly to no other conclusion. It should *not* be after the denial of a hearing, and after a refusal even to receive evidence in their behalf.

We say, with great confidence and with all due respect to the Court, that there is no evidence in this record to support the Court's finding that this litigation was vexatious; and we say, further, that a great wrong was done when the Court denied all opportunity to present evidence, both oral and documentary, to prove that the institution and conduct of this litigation was in entire good faith and fully justified.

We lay to one side, for the moment, the facts set forth in the application to introduce testimony, printed as Appendix A, which fully and completely sustain the integrity of the entire litigation, and fully and amply warrant its institution and its conduct from beginning to end. We now proceed to point out other facts and features contained in the record, but evidently overlooked by the Court, which effectively disprove the charge of vexatious litigation.

The Cambria Company Bill.

The Cambria Company bill was an ordinary creditor's bill, based upon a judgment for $100,000, against the Belt Company. It alleged that upon a true accounting between the Belt Company and the Trust Company, the latter's claim of debt would be wiped out, and the collateral then held by the Trust Company would be subjected to the judgment. It was well known that there had been dealings between the Belt Company and the Trust Company, covering a period of years, during which there had been a community of officers, the Trust Company being the dominant company. The Cambria Company appealed to the rule stated in *Geddes* v. *Anaconda*

Copper Co., 254 U. S. 590, where it is held that transactions between boards having common members are zealously scrutinized; and where the fairness of such transactions is challenged, the burden rests upon the dominant company to show their entire fairness.

Special Master Douglass recognized the propriety of an accounting between the parties. He said (S. C. Rec. 760) that "the relations of the Belt and Trust Companies were exceedingly intimate, and of such character as not only to warrant, but perhaps to exact, the most scrutinizing investigation of any questionable transactions between them, at the instance of any interested party."

There is not the slightest indication in the record that the Cambria suit was malicious, and without probable cause, within the definition of a "vexatious suit." While this Court stated that the Cambria suit was inspired by the Southern Company, the facts in the record are that the Southern Company pointed out to the Cambria Company the relations between the Belt Company and the Trust Company, and the opportunity to subject the collateral to the Cambria Company's claim if the Trust Company's debt should be cancelled. The Cambria Company acted in its own interest in instituting the action. It has been intimated that the Southern Company has paid the Cambria Company's judgment. The record does not show this to be a fact; and it is not a fact, as we stand ready to prove, if deemed material.

The Bill of the Belt Company and Its Receivers.

(a) The ancillary bill of the Receivers for the Belt Company was filed pursuant to direction of the Court which appointed them. The Receivers were authorized (Rec. 29) to bring suits for an accounting, arising out of past dealings between the Belt Company and any other person whatsoever. Every one understood this to be an authorization, if not, indeed, a direction, to institute a suit for an accounting against the Trust Company. There was no other company to which it could apply. In effect, therefore, the district court of the United States for the western district of Missouri, acting

judicially, authorized the Receivers, as the arm of the court, to institute this very proceeding which is now characterized as vexatious. As we have before had occasion to say, quoting from 120 U. S. 141, it is the invincible presumption of the law that the judicial tribunal, acting within its jurisdiction, has acted impartially and honestly, and that neither misconduct nor demerit can be imputed to the court itself. As the Receivers acted under the direction of the court, how can any improper motives be imputed to them? If the filing of the bill was vexatious, it was the court itself which directed the institution of the vexatious proceeding.

(b) The amended ancillary bill was filed by agreement with the Trust Company, embodied in a stipulation (Rec. 890). The stipulation is signed by Francis M. Black, at that time Receiver for the Trust Company and a former Judge of the Supreme Court of Missouri, and an honorable and upright man. We contend that this stipulation provided for an accounting by agreement of the parties. It will be noted that the stipulation provides that the Belt Company shall be a party complainant with the Receivers. Why was this done? This would be fully answered if we were at liberty to offer the testimony outlined in the petition printed as Appendix A; but, without the aid of that testimony, it is apparent from the stipulation itself that Judge Black wanted the Belt Company to be a party complainant so that, if he were successful, he might have judgment against the corporation itself. This is further evidence that the Trust Company itself felt that an accounting was inevitable, and that the sooner it was had the better. Surely, it will not be denied that an accounting had by consent is not a vexatious proceeding.

That the stipulation was intended by the Trust Company as a consent to an accounting, is not only apparent from the stipulation itself, but the lower court expressly ruled that such was its effect. The court, in March, 1908, in the course of denying a motion filed by the Trust Company, and after reciting the foregoing stipulation, said:

> The Guardian Trust Company, by its stipulation, its appearance and answer in said cause has consented to the submission to said Master the hearing and find-

> ings on all the matters involved in controversy between it and the parties to said litigations. It has consented that the Master take an accounting, finding and report as to the respective rights and claims of the parties to the property, notes, bonds and claims involved.

This was an adjudication of the court, made after hearing, at which the Trust Company was represented by counsel. No objection was ever made by it to the court's ruling. If, as the court decided, the accounting was by agreement between the parties, how is it possible that such a proceeding can now be characterized as vexatious?

(c) The Court in its opinion refers, with apparent criticism, to the filing of the first amended and supplemental ancillary bill of the Belt Company and its Receivers. The fact is that this pleading was filed at the request and insistence of the Trust Company, which took the position that, having submitted its account to the master, it devolved upon the complainant to surcharge and falsify the account. The pleading was filed to satisfy this demand, as appears from a fragment of the proceeding before the master in the record (p. 15). The Court also refers, with apparent disapproval, to the filing of the second amended and supplemental bill of complaint. This pleading, however, was filed by stipulation between the parties (S. C. Rec. 391), after the taking of testimony was completed, and in order to conform the pleading to the proof. This is the usual and ordinary practice, and ought not to give rise to adverse criticism.

The intervening petition of the Southern Company.

The Southern Company's intervening petition was filed by agreement with the Trust Company, embodied in a stipulation (S. C. Rec. 164-166). Its counsel knew the nature of the claim to be asserted by the Southern Company, and was, in fact, anxious to have the Southern Company a party to the action. The amended intervening petition was also filed by agreement, expressed by stipulation (S. C. Rec. 267-269). It will also be noted that the Trust Company expressly consented

in the stipulation that the claim against it on account of its disposition of the Union Terminal Company bonds should be litigated in this action; otherwise it is improbable that this claim could have been asserted in the intervening petition. The Southern Company's claim was based upon the fact that it was the purchaser at foreclosure sale of the properties of several companies, and thereby acquired the equitable title to the collateral held by the Trust Company, or the properties represented by it. This claim was sustained by the special master and by the lower court with respect to the lands of the Central Improvement Company, which were by far the most important and valuable item in the controversy. We respectfully invite the Court or counsel to point out any fact or circumstance indicating, directly or remotely, that this intervention was malicious or without probable cause, or that it constituted a vexatious suit or proceeding.

The charge of fraud.

It is true that fraud was charged on both sides; but the fraud charged against the Trust Company was in the nature of constructive fraud (26 C. J. 1061), arising from the relation of the parties, the common officers and directors, controlling the corporations in question, and the alleged misuse by the Trust Company of the power derived from this community of interest, within the rule of the *Geddes* case, 254 U. S. 590.

The Trust Company itself did not feel that charges of gross fraud or misconduct had been made against it. It deliberately took the position that the charges made were of constructive fraud, and not "actual fraud." This is a matter of record. In the "Answer of Guardian Trust Company on rule to show cause," filed in the lower court on December 16, 1907, it is said, in paragraph 13 (Rec. 558):

> There is no valid cause of action against this defendant set up in the said ancillary bill of complaint; *no actual fraud is charged therein* and said bill presents a legally meaningless theory and an impossible case.

The foregoing statement is signed by Mr. Rosenberger and Mr. Mecartney, both counsel for the Trust Company at that time, *and is sworn to by the former.*

It thus appears that it was the deliberate opinion of the Trust Company in 1907, about a year after this case had been argued for two weeks before the special master, when the whole matter was fresh in the minds of counsel, that no "actual fraud" had been charged against it. At that time the Trust Company did not conceive itself injured, or even irritated, by the charges made. It is inconceivable to us how the Court is able to discover gross and scandalous charges of fraud, when the Trust Company, through its counsel, not only stated to the Court that no such charges had been made, but actually made oath to the statement. If the Trust Company thought that the litigation was vexatious, or that charges of gross fraud had been made against it, here was a splendid opportunity to say so. Clearly, if the proceedings were vexatious, the Trust Company in 1907, after the conclusion of all the testimony and after the completion of extended arguments before the master, was totally unaware of that fact.

When the Trust Company took its appeal, it assigned as error (201 Fed. 817) "that the Court erred in adjudging that one-third of the costs of this action be paid by the Trust Company." If the Trust Company at that time conceived that the litigation was so vexatious as to involve the taxation of costs as between solicitor and client, it seems reasonably certain that it would have said so at that time. Its attention was sharply directed to the matter of costs. It deliberately stated its complaint with respect to the costs. It is entirely clear that, at that time, neither the Trust Company nor its counsel entertained the thought that the litigation was anything more than a sharply contested lawsuit.

There was ample justification for the accounting.

Aside from the order of the lower court providing for the accounting, and aside from the stipulation consenting to an accounting, and laying to one side all other matters which have been referred to above, there was, we earnestly and confidently contend, full and complete justification for the

demand made upon the Trust Company for an accounting.

Space does not permit a review on this motion of all the charges made by complainants, which, we contend, amply justified the accounting. If the Court feels that it would be in any degree helpful, we will gladly undertake the severe task of reviewing all the charges made by complainants, with references to the testimony of witnesses and to the report of the master, showing a complete justification for requiring the Trust Company to account for its conduct.

We will, therefore, for the present, content ourselves with referring to one item, referred to as the De Goeijen item of $89,333.33. This was 25 per cent. of the entire indebtedness claimed by the Trust Company, amounting, at that time, to about $360,000. It appears without contradiction that this item of $89,333.33 had been for a long time prior to March 31, 1899 (the day preceding the receivership of the Gulf Company), carried on the books of the Trust Company as an indebtedness of Mr. De Goeijen (whose solvency was doubtful), and on that day was arbitrarily, and without consideration, charged to the Belt Company, thus increasing its apparent indebtedness in the same amount. It was believed by the complainants, at the time of the institution of this litigation, and there was obvious justification for the belief, that the Trust Company on the eve of the receivership of the Gulf Company had merely dumped this uncollectible debt back on the Belt Company; and, accordingly, in the accounting suit, this item of indebtedness was challenged.

One of the outstanding and impressive features of this case, is that the Trust Company and its counsel believed that the Trust Company had no right to dump this account back on the Belt Company, and that the claim would have to be allowed. This is a matter of record, about which there can be no question or controversy. Mr. Mecartney became Chief Counsel for the Trust Company in 1904, and in a written report upon this litigation made to the directors of that company, dated December 1, 1904 (Rec. 540), after stating the facts with respect to the De Goeijen item of $89,333.33, said the Belt Company should be re-credited with this amount. He said: "The item must be allowed." This was the deliberate opinion of the Chief Counsel for the Trust Company, given

four years after the institution of the action. Twenty-five per cent. of complainants' claim was, in his opinion, not even debatable. It was not to be litigated; it was to be conceded and allowed. Other counsel for the Trust Company (Rec. 512) had been of the same opinion.

We have, then, a claim in the accounting suit amounting to $89,333.33 which complainants' counsel felt was a just and meritorious claim. Defendant's counsel also felt that it was a just and meritorious claim, and so stated in writing to his principal. In the face of this fact, how can this Court say that the whole litigation was vexatious? If a plaintiff asserts, and the defendant concedes, that plaintiff's claim to the extent of 25 per cent. is just and meritorious, can it be said that it is a vexatious suit, involving malice and want of probable cause? Is it malicious to sue a defendant for what it admits to be due? Is there not probable cause for a demand when defendant concedes it to be just?

True, the De Goeijen item was disallowed by the master. The circumstances are set forth in detail in our brief in this Court (p. 20). It is not pleasant reading. It is sufficient to say that a witness was employed by the Trust Company to demolish this item, in consideration of one-half of one per cent. upon the amount to be saved by the Trust Company, or a total of $446.66. But, to make it look right, his compensation was fixed at $450.00. He testified to a secret understanding, not evidenced in any record, paper, document, book or memorandum (S. C., Rec. 692), and thus the Trust Company escaped. One of the extraordinary and incomprehensible features of the Court's opinion is that it requires the Southern Company to pay $450.00 to the Trust Company for testimony of a secret understanding which enabled that company to get rid of a claim which it freely conceded to be correct, amounting to one-fourth of the entire amount in controversy.

No court has found that any part of this litigation was baseless and unwarranted.

We challenge the statement contained in the opinion (p. 13): "This Court characterized the Cambria Company suit as 'baseless' and 'unwarranted'."

We strenuously insist that this Court in its former opinions made no finding whatsoever of the *bona fides* of the institution and prosecution of this action. In its first opinion (201 Fed. 811), the facts are stated at page 816, in plain language and without the use of unnecessary emphasis. It said:

> The master found that the evidence did not support the claim of the Cambria Company, and recommended that its bill be dismissed for want of equity. . . . The report of the special master was in all things approved and confirmed, and a decree entered in accordance with the findings and recommendations of the master.

Upon the reargument, counsel for the Southern Company endeavored with much earnestness in brief and argument to controvert the conclusions of the Court stated in the first opinion. Substantially the only issue dealt with was the liability issue. As the criticism by counsel of the first opinion of the Court had been respectfully earnest and strenuous, so, the second opinion of the Court was emphatic and positive in support of the conclusion reached in its first opinion. The conclusions reached by the Court in its first opinion, and in its second opinion, were substantially the same; the difference between them is largely in the emphatic language employed in the second opinion to reinforce its first conclusion. In the second opinion (210 Fed. 714), in reciting the facts to show that there was no evidence of laches on the part of the Trust Company, the Court expanded the simple statement above quoted into the following:

> On September 6, 1900, the Cambria Company commenced the suit here in hand against the Belt Company and against the Trust Company to enjoin the latter from selling its collateral and applying their proceeds to the payment of the debt of the Belt Company, a suit which it founded on the averment, which has been *adjudged* untrue, that the Belt Company was not indebted to the Trust Company, and on other allegations so baseless that it has *become* clear that the Cambria Company had no cause of action against the Trust Company.

This, we respectfully submit, is no more than saying that in the decree in the lower court it was *adjudged* that the bill

of the Cambria Company should be dismissed for want of equity. There is here no independent finding made by this Court. There could not be, since the evidence was not brought to this Court.

Again, the Court says (p. 717):

> It (the Trust Company) gave notice of its sale of its remaining collaterals on September 1, 1900, and was enjoined from proceeding in the baseless suit of the Cambria Company.

Again, it is said (p. 718):

> By the Belt Company's consent to a judgment against it in favor of the Cambria Company, it laid the technical foundation of the Cambria Company's unwarranted suit, which prevented the Trust Company from selling its collaterals, and held the issue of the Belt Company's indebtedness to it suspended for more than eight years.

In both these quotations, this Court is not making an independent finding of its own; it is merely reciting the *adjudication* in the lower court, that the bill of the Cambria Company was without equity. In the nature of things, this Court could not have made a finding that the Cambria Company suit was wholly baseless and unwarranted, except in the sense stated. The evidence in the case was not taken to this Court. The Court said (201 Fed. 816): "The evidence has not been brought to this court." As this Court states (210 Fed. 723), "it would be unwise and might be unjust" to adjudicate any issue in the absence of the evidence. No appeal had been taken to the finding on the issue of debt or no debt as between the Belt Company and the Trust Company, and hence neither that issue nor any of the evidence bearing upon it was before the appellate court. This Court used the quoted language in the course of a somewhat spirited argument against the imputation of laches to the Trust Company. It was supporting its conclusion; not making a finding of fact.

The opinion of the Supreme Court is controlling, and it contains no intimation that the litigation was vexatious.

We have contended that there was no finding by this Court that the litigation, or any part of it, was unwarranted, or baseless, or vexatious. The case was appealed to the Supreme Court of the United States, and its opinion supersedes the opinion of this Court, and its mandate controls the character of the decree entered in the district court, including provisions in the decree touching the matter of costs.

In the opinion delivered by the Supreme Court, the history of the litigation is stated, the relations of the parties are defined, and the entire matter is reviewed, as it was in this Court, and the decree of this Court was affirmed. What, therefore, was the decree of this Court? It is found in the concluding paragraph of its opinion (210 Fed. 723, 724), where the District Court is directed to enter a specific decree, the details of which are stated at length. The Southern Company is required to pay the debt of the Belt Company "and the costs of this suit." If it fails to do so, then certain property may be sold in order to pay "the debt and the costs" out of the proceeds of the sale. The proceeds of such sale shall be applied in the payment of the debt "and of the costs after as well as before the decree." "The decree should adjudge that the Trust Company may recover its costs down to the entry of the decree of the Cambria Company as well as of the Southern Company, and the court may apportion those costs between them, but not as against the Trust Company, which should be permitted to pursue either or both of them until its costs are paid."

This is the decree which the Supreme Court affirmed, for reasons stated in its opinion. Nothing is said by the Supreme Court or in the proposed form of decree which warrants an imputation of bad faith. The decree carries ordinary costs as between party and party, and no more. If the Supreme Court had intended that costs should be taxed in accordance with rules obtaining in some foreign jurisdiction, or in some unusual and unprecedented manner, it would have said so in plain and direct language. If it had thought that the litigation

was trivial or vexatious, and that the parties should be penalized on that account, we may be sure that we would not be left to conjecture as to its intention. Where the Supreme Court finds that either parties or counsel have overstepped the bounds of propriety, and for that reason need to be rebuked, it is its custom and practice to say so in direct and unambiguous language.

II.

This Court has erroneously ignored the controlling effect of the Supreme Court's opinion and mandate, which require the taxation of costs only as between party and party.

This Court in its opinion quotes freely from the opinion of this Court (210 Fed. 696) and bases its conclusion exclusively upon what is there said. No reference is made to the opinion of the Supreme Court or to its mandate. This, we contend, was a manifest error. As before stated, the opinion and mandate of the Supreme Court operated to supersede the opinion and mandate of this Court, and it is clear, we contend, that the opinion and mandate of that court contemplate and require the imposition of costs only as between party and party, and effectively prohibit the taxation of costs as between solicitor and client.

It is familiar law that it was the duty of the district court, to which the mandate in this case was addressed by the Supreme Court (Rec. 465), to carry it into execution according to its terms, in the light of the opinion of the Supreme Court. It could not vary it or examine it for any other purpose than execution; or give any other or further relief, or review it, even for apparent error; nor intermeddle with it in any manner (*Ex Parte Union Steamboat Company*, 178 U. S. 317).

The only power possessed by the district court was "to enter a judgment carrying out the mandate according to its terms" (*Re Washington R. Co.*, 140 U. S. 91). This, of course, means the mandate of the Supreme Court,—not the mandate of this Court.

In *Re Sanford Fork & Tool Co.*, 160 U. S. 247, the court said:

> When a case has been once decided by this court on appeal and remanded to the circuit court, whatever was before this court, and disposed of by its decree, is considered as finally settled. The circuit court is bound by the decree as the law of the case; and must carry it into execution, according to the mandate. That court cannot vary it or examine it for any other purpose than execution; or give any other or further relief; or review it, even for apparent error, upon any matter decided on appeal; or intermeddle with it, further than to settle so much as has been remanded. Sibbald *v.* United States, 37 U. S. 12 Pet. 488, 492; Texas & P. R. Co. *v.* Anderson, 149 U. S. 237. If the circuit court mistakes or misconstrues the decree of this court, and does not give full effect to the mandate, its action may be controlled, either upon a new appeal (if involving a sufficient amount) or by a writ of mandamus to execute the mandate of this court.

The court added:

> The opinion delivered by this court at the time of rendering its decree may be consulted to ascertain what was intended by its mandate; and either upon application for a writ of mandamus, or upon a new appeal, *it is for this court to construe its own mandate, and to act accordingly.* Sibbald *v.* United States, 37 U. S. 12 Pet. 488, 493; West *v.* Brashear, 39 U. S. 14 Pet. 51; Wayne County Suprs. *v.* Kinnecott, 94 U. S. 498; Gaines *v.* Caldwell ("Gains *v.* Rugg"), 148 U. S. 228, 238, 244.

The interpretation of the Supreme Court's opinion and mandate is exclusively for that court. The question in this case is what the Supreme Court intended by its opinion and mandate. The hearing in the Supreme Court was *de novo.* Its opinion naturally superseded the opinion of the lower courts. So well established is this rule that the Supreme Court will grant certiorari to the Court of Appeals where, as here, the question "involves the construction of a prior decree of the United States Circuit Court affirmed by this court" (*St. Louis, K. C. & C. R. Co.* v. *Wabash R. Co.*, 217 U. S. 247, 251).

The exclusive power and duty of the Supreme Court to construe its own decrees is emphasized in *United States* v. *Terminal R. R. Assoc.*, 236 U. S. 194, where the court said (p. 199):

> A motion made by the United States to dismiss the appeal taken by the defendants in No. 572 is also without merit. The duty of the court below was but to execute the mandate of this court, and every controversy between the parties concerning the discharge by the court below of its duty was open for this court to examine either originally, if essential, or as the result of an appeal by one of the parties, or by way of assertions of right made by the other party as an appellee even in the absence of a cross appeal,—a result inevitably arising from the fact that both parties, so far as the settlement of the decree of this court was concerned, were in this court and endowed with the capacity to invoke its action for the proper shaping and execution of the decree, either by original proceeding or in any other appropriate form.

It is clear that the opinion of this Court was not binding upon the Supreme Court; even the opinion and mandate of this Court upon a prior appeal would not have been *res judicata* in the Supreme Court (*Messenger* v. *Anderson*, 235 U. S. 436; *Diaz* v. *Patterson*, 263 U. S. 399).

The Supreme Court did not affirm the expression of the views of this Court, set forth in its opinion, but it did affirm the decree of this Court. We now proceed to examine the decree of this Court to ascertain what the Supreme Court intended by its affirmance.

While this Court did not render a formal decree, it directed the lower court to render a specific decree. It was this specific decree which the Supreme Court affirmed. For ready reference, we quote it, as follows (210 Fed. 723, 724):

> And the conclusion of the whole matter is that the decree below should be reversed and the district court should render a decree which should contain the first five paragraphs of the former decree, except that the proceeds of the sale of 99 first mortgage bonds and coupons of the Kansas City & Northern Connecting Railroad Company, amounting to $40,001.25, referred to in paragraph 5 of the former decree, together with

all interest which has accrued and shall accrue, has been and shall actually be earned on said sum, shall be applied as a credit at the time when the Trust Company shall receive said sum as its own, upon the amount which the Southern Company should pay to the Trust Company, as hereinafter provided, which future decree should also adjudge that the Southern Company is indebted to and should pay to the Trust Company the amount of the indebtedness of the Belt Company to the Trust Company, that is to say, the sum of $639,658.86 and interest from the date of the former decree on $473,723.59 at 6 per cent. per annum, on $46,565.76 at 7 per cent. per annum, and on $119,369.51 at 8 per cent. per annum, *and the costs of this suit;* that the Trust Company's right to and equity in the property of the Belt Company which was transferred to the Southern Company by means of the exchange of the stock of the Belt Company for the stock of the Southern Company and by the foreclosure proceedings, sale, and conveyance, and otherwise, was and is prior in time and superior in equity and right, to the extent necessary to pay that debt, to the right, title, and equity of the Southern Company therein; that by virtue of the indebtedness of the Belt Company to the Trust Company and the pledge to it of 1,120 shares of the stock of the Central Company, the equity and right of the Trust Company in the property of the Central Company described in the sixth paragraph of the former decree is superior, to the extent necessary to pay that debt, to the right, title, claim, and equity of the Southern Company therein; that in case the Southern Company shall pay its debt to the Trust Company *and the costs of this suit* adjudged in this suit by a day to be named in the decree, then all the collateral security described in paragraph 5 of the former decree which has not then been disposed of, and all the proceeds of such security which has not then been disposed of or applied, shall be surrendered and delivered to the Southern Company; that in case the Southern Company fails to pay its debt to the Trust Company and *the costs of this suit* by a day to be named by the court in the decree, then the said property of the Central Company and the property of the Belt Company which was transferred to the Southern Company as aforesaid, and the collateral security then remaining in the possession of the Trust Company, or such part or all said property as it shall be necessary to sell in order to pay the debt and

costs out of the proceeds of the sale or sales to which the Trust Company, in view of the pledge to it of only 1,120 shares of the stock of the Central Company and the possible equities of the Central Company's other stockholders and creditors, shall be equitably entitled, be sold by a master or receiver to be named by the court; that the proceeds of such sale or sales to which the Trust Company shall be equitably entitled be applied to the payment of the debt and of *the costs* after as well as before the decree until they are completely paid; and that the remainder of the proceeds, if any, be paid to the Southern Company or to such other party as may be equitably entitled thereto; that on the demand of the master the Southern Company, the Trust Company, the Central Company and its receiver, surrender and deliver to him, or to the purchaser or purchasers of any of this property as the master shall direct, such part or all of said property as he shall specify; and that, if an amount to which the Trust Company shall be equitably entitled sufficient to pay the debt with interest and *the costs* before and after the decree is not realized from the sales, then that the Trust Company have judgment and execution against the Southern Company for the remainder unpaid. The decree should adjudge that the Trust Company may recover *its costs* down to the entry of the decree of the Cambria Company as well as of the Southern Company, and the court may apportion *those costs* between them, but not as against the Trust Company, which should be permitted to pursue either or both of them until *its costs* are paid.

What provision for the taxation of costs did the Supreme Court intend to make by its affirmance?

There are numerous references to "the costs of this suit"; "the costs after as well as before the decree"; "its costs down to the entry of the decree"; with a further provision that the Trust Company shall be permitted to pursue either the Cambria Company or the Southern Company, or both of them, "until its costs are paid."

When the Supreme Court affirmed the decree awarding "costs," without further designation or qualification, against the unsuccessful party, it could only mean taxable costs, in the ordinary acceptation of the term, that is, costs as between party and party, as the word "costs" has been used in judg-

ments and decrees from time immemorial, in accordance with the practice of taxing costs which has prevailed in this country from the beginning. It could only mean ordinary taxable costs, as distinguished from an allowance out of a fund, or as distinguished from attorneys' fees fixed by statute and allowed in certain designated cases.

Is it to be assumed that when the Supreme Court affirmed the decree carrying "costs," it acted carelessly and inadvisedly, and that what it really intended to do was to import into our jurisprudence the English system of taxation of costs, by which the losing party was to be burdened and penalized with the attorneys' fees and other expenses of the successful litigant? Is it possible to assume that the Supreme Court, merely by affirming a decree carrying "costs," intended thereby to overrule its long line of decisions, such as *The Baltimore,* 8 Wall. 397; *Oelrichs* v. *Williams,* 15 Wall. 211; *Tullock* v. *Mulvane,* 184 U. S. 497, and *Missouri Pacific R. Co.* v. *Larabee,* 234 U. S. 459, which, we contend, have authoritatively established a rule in this country exactly to the contrary?

But it will not do to indulge in the assumption that the Supreme Court in its opinion and mandate overlooked some feature which a lower court may feel called upon to correct. Such was the case of *Washington R. Co.* v. *McDade,* 135 U. S. 554, where the Supreme Court affirmed the judgment of the lower court, but nothing was said about an allowance of interest, and the lower court, assuming this to be an oversight, made an allowance of interest. The Supreme Court, however, in *Re Washington R. Co.,* 140 U. S. 91, by mandamus, pointed out with some emphasis that its mandates, whether right or wrong, were not to be corrected by a lower court.

It is too plain to require argument that if the Supreme Court had intended any departure from the ordinary practice in the taxation of costs, it would have said so in plain and unambiguous language. If it had intended that an allowance should be made to the Trust Company in addition to taxable costs, it is unthinkable that a statement to that effect would not be found in the opinion or the mandate. If it had intended to overrule its prior decisions and import the English system

into our jurisprudence, it is inconceivable that it would not have said so in plain language, which would be a warning to all future litigants that litigation thereafter was to be at the peril of paying all counsel fees in case of failure.

But there are other facts and circumstances which amount to a demonstration that the Supreme Court intended the decree to carry nothing more than the ordinary taxable costs. Its opinion contains no language and no statement indicating any reason for departing from the ordinary rule of imposing taxable costs upon the defeated party. As has been before pointed out, there is not the slightest suggestion in the opinion that the court regarded the litigation as trivial or vexatious, or otherwise than as an earnest and strenuous effort of the parties to secure an adjudication upon serious and difficult questions. There is no suggestion in the opinion that the Trust Company was put to the expense of defending pledged property and that it should be compensated therefor. There is no intimation in the opinion that the Trust Company accumulated and brought into court a fund for distribution among creditors for which an allowance should be made. There is nothing in the opinion to warrant a departure from the ordinary, every-day rule for the taxation of costs.

The recent case of *Sioux County* v. *National Surety Co.*, U. S. , decided February 20, 1928 (72 L. Ed. 240), should be accepted as conclusive authority that the word "costs" does not include attorneys' fees. There, the action was on a surety bond, under a statute of Nebraska which provided that in such actions "a reasonable sum as an attorney's fee in addition to the amount of his recovery" may be taxed as a part of the "costs." This Court held (16 F. (2d) 688) that attorneys' fees were not a part of the "costs" provided for in R. S. Sec. 823 and 824, and, therefore, could not be allowed as costs in a Federal court. Upon appeal, the Supreme Court stated the position of this Court in the following language (p. 241):

> In striking down so much of the judgment as allowed an attorney's fee the court below was persuaded that sec. 7811, which provides for an attorney's fee, authorized it only as costs to be taxed in the state court. As

> costs in the federal courts are regulated exclusively by Rev. Stat. sec. 823 and 824 the court concluded that other costs, authorized only by a state statute, could not be included in the judgment. See United States *v.* Sanborn, 135 U. S. 271, 282; The Baltimore, 8 Wall. 377, 388, *et seq.;* compare Ex parte Peterson, 253 U. S. 300, 314-319.

The question was thus squarely presented for decision by the Supreme Court as to whether attorneys' fees constitute a part of the "costs" which may be allowed as such in a Federal Court; and it agreed with this Court that such attorneys' fees are not, and cannot be, a part of the taxable costs prescribed by the Federal Statute. The Court did, however, give effect to the Nebraska statute by holding that the amount of the attorney's fee could be included in the judgment. It said (p. 242):

> That the statute directs the allowance, which is made to plaintiff, to be added to the judgment as costs are added does not make it costs in the ordinary sense of the traditional, arbitrary and small fees of court officers, attorneys' docket fees and the like, allowed to counsel by Rev. Stat. sec. 823, 824. The present allowance, *since it is not costs in the ordinary sense,* is not within the field of costs legislation covered by Rev. Stat. sec. 823, 824. That the particular mode of enforcing the right provided by the state statute—*i. e.,* by taxing the allowance as costs—is not available to the federal courts under Rev. Stat. sec. 823, 824 does not preclude the recovery. Since the right exists, the federal courts may follow their own appropriate procedure for its enforcement by including the amount of the fee in the judgment.

This latest and controlling ruling of the Supreme Court is direct authority that the word "costs," even when used in a statute, is not broad enough to include attorneys' fees; and, furthermore, that the costs provided for in R. S. secs. 823, 824 do not include attorneys' fees. How can it be argued, therefore, that when the Supreme Court directed that "costs" be paid by the Southern Company, it intended to include the attorneys' fees of the Trust Company?

In two other decisions of the Supreme Court, hereafter referred to (*Oelrichs* v. *Williams,* 15 Wall. 211, and *Tullock* v. *Mulvane,* 184 U. S. 497), the actions were upon injunction bonds which were conditioned to pay to defendants "all costs and damages." In both cases, it was held that counsel fees, incurred in securing a dissolution of the injunction bonds, did not come within that expression.

In 39 Cyc. 463, it is said:

> Where the costs of a trustee are directed to be taxed, that means as between party and party; not in the larger way.

In several instances the lower courts have held that the word "costs" in a decree or in a statute is to be construed as including only taxable costs, as distinguished from allowances. Some of these will now be referred to.

In *Kell* v. *Trenchard,* 146 Fed. 245 (Circuit Court of Appeals, Fourth Circuit), the mandate of the Court of Appeals provided that the "costs" of the case in both the appellate and the lower court should be borne equally by the appellant and the appellees. In a taxation of costs pursuant to this direction, the lower court included an allowance to the receiver as a part of the costs properly to be divided. The action of the lower court in including the allowance to the receiver was appealed from, and reversed on appeal, the appellate court saying (p. 247):

> In decreeing the division of costs in this court and the court below was meant only *the ordinary taxable costs of the litigation,* and not such charges and expenses as the costs of the receivership and payments and allowances to receivers; those being costs properly appertaining to the receivership, and chargeable against the *property* in the receiver's hands. Ferguson *v.* Dent (C. C.) 46 Fed. 88; Elk Horn Oil & Gas Co. *v.* Foster, 99 Fed. 495, 39 C. C. A. 615.

In *Doddridge County Oil & Gas Co.* v. *Smith,* 173 Fed. 386, it is held that under a decree of a federal court awarding the lessee "its direct damages and costs incurred by reason of its exclusion from the lease," it is not entitled to recover from the defendant the amount paid its counsel for services

beyond the docket fee taxable under R. S. sec. 823, 824, either as costs or direct damages. The court said (p. 389): "the attorney's fees and expenses incurred by the company cannot be decreed against Smith as costs."

In *United States* v. *Wilson,* 193 Fed. 1007, it is said:

> I think that the word "costs" in section 974, Rev. Stat. U. S., means taxable costs of the trial before the court and petit jury in which defendants have been convicted.

In *United States* v. *Smith,* 240 Fed. 756, the court said (p. 757): "the word 'costs' means merely the taxable costs of the court cause."

If the Trust Company desired to have the opinion and mandate of the Supreme Court broadened so as to include allowances in the nature of costs as between solicitor and client, it should have made an appropriate application to that court for that purpose, and before the expiration of the term. After the lapse of the term of the Supreme Court, the provision relative to costs could not be altered (*Fairmont Creamery Co.* v. *Minnesota,* 275 U. S. 70, 73).

III.

Upon no conceivable theory of the law was the Court justified in imposing upon the Southern Company the Trust Company's counsel fees for services rendered after the decree of the lower Court of June, 1910.

The effect of the Court's opinion, as we read it, is to impose upon the Southern Company all of the Trust Company's expenses for attorneys' fees and other items during the entire litigation, covering the period after the decree of June, 1910, as well as prior thereto.

We desire, as a preliminary matter and before coming to a discussion of the principle of taxation of costs as between solicitor and client, to direct the Court's attention to that part of the litigation occurring after the decree of June, 1910. We earnestly and confidently contend that upon no conceiv-

able theory of the law, not even upon the Court's own theory, can the Trust Company's expenses, incurred during this period, be taxed against the Southern Company.

Shortly stated, these expenses were incurred, in the main, upon the issue of the Southern Company's liability for the debt of the Belt Company, which the Trust Company itself injected into the case in 1905. This issue, as we have pointed out under a previous heading, involved serious and difficult questions of law, and the Southern Company cannot, in good conscience, be penalized for resisting the Trust Company's claim in the lower court or in the appellate courts. Furthermore, a large part of the Trust Company's expenditures for attorneys' fees during this period, to wit, $47,000.00, were, in the opinion of this Court (280 Fed. 64), due solely to the alleged incompetency of its counsel, for which the Southern Company was in no way responsible.

The Trust Company's appeal from the decree of June, 1910.

Aside from formal and other matters immaterial to this discussion, the final decree of June, 1910, adjudicated three matters: First, that the Belt Company was indebted to the Trust Company in the sum of $639,658.00; secondly, that the Southern Company was not liable for this indebtedness; and, thirdly, that the Southern Company was entitled to the property of the Central Improvement Company, which, as above stated, was then valued at approximately $200,000.00.

From this decree the Trust Company appealed to this Court. It presented three assignments of error, which are thus stated by this Court (201 Fed. 817):

> (1) That the court erred in including in said decree the finding that the Southern Company did not assume or agree to pay or become liable for the indebtedness owing by the Belt Company to the Trust Company.
>
> (2) That the court erred in requiring the Central Improvement Company and its receivers to convey to the Southern Company the properties specified in the decree.

(3) That the court erred in adjudging that one-third of the costs of this action be paid by the Trust Company.

Neither the Southern Company nor the Belt Company and its receivers appealed from this decree. The reasons therefor are plainly apparent from the situation as it then existed. While it was thought that the judgment against the insolvent Belt Company was erroneous and, in certain respects, unwarranted by the evidence, yet the Southern Company was held not liable for its payment. The Trust Company's own appeal only drew in question the propriety of *including* the finding of nonliability in the final decree, and did not seek to relitigate that issue. Furthermore, the Southern Company was awarded the Central Improvement Company land, which was by far the item of greatest value involved in the collateral held by the Trust Company. Under these circumstances, the Southern Company and those allied with it in the litigation were willing to accept the final decree, and to content themselves with an effort to secure its affirmance upon appeal. When, a year later, this Court gave the Trust Company an opportunity to relitigate the liability issue, it was then too late for the Belt Company and its receivers to appeal.

The liability of the Southern Company for the judgment against the Belt Company was the main issue in the Trust Company's appeal, and this, as before stated, was an issue which that company itself injected into the litigation in the lower court. The disposition of the Central Improvement Company property was an incident thereto, since, if the Southern Company should be liable for the debt of the Belt Company, all the collateral, including the Central Improvement Company property and securities, would, upon the payment of the debt, revert to the Southern Company. The Trust Company's assignment that the lower court erred in the judgment that one-third of the costs of the action be paid by the Trust Company, is of no significance here, except that it indicates pretty conclusively that the Trust Company at that time had no thought that anything more than ordinary costs, as between party and party, should be awarded against the Southern Company, or any one else.

Counsel fees incurred after the decree of June, 1910.

We lay to one side for later consideration the counsel fees and other expenses incurred by the Trust Company up to and including the final decree of June, 1910, and confine ourselves now exclusively to its disbursements for counsel fees and other expenses incurred by it subsequent to the date of the decree, which include two hearings in this Court and one hearing in the Supreme Court. The injustice of imposing these expenses upon the Southern Company is so plain and obvious that a brief reference to the uncontradicted facts will suffice to point out the error into which the Court has fallen.

Upon what conceivable principle can the Southern Company be condemned to pay the Trust Company's attorneys' fees and other expenses involved in its appeal to this Court to determine the liability issue which the Trust Company itself injected into the litigation in 1905? The decree of the lower court was against the Trust Company; and, accordingly, it appealed to this Court. As has been heretofore pointed out, the issue was an exceedingly difficult one, and involved in much doubt and uncertainty. The *Boyd* case (228 U. S. 482) had not then been decided. This Court recognized the serious and difficult nature of the controversy when it permitted two arguments and handed down two elaborate opinions. The Supreme Court held that the nature of the case was such as to warrant the grant of its writ of certiorari, and the case was finally decided by a divided court. What justification can there be for penalizing the Southern Company in these circumstances?

What rule of law or morals or ethics did the Southern Company violate in resisting the appeal of the Trust Company to this Court, and in appealing from this Court to the Supreme Court, which should warrant the imposition of drastic penalties? What warning was there in the books of text writers or in the decisions of the courts, saying to the Southern Company, in effect: "If you resist the Trust Company's appeal to the Circuit Court of Appeals, or if you appeal from that Court to the Supreme Court, you do so at your peril of being mulcted for the attorneys' fees and other

expenses of the Trust Company, in the event that you are unsuccessful."

What becomes of the guaranty that "The courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice should be administered without sale, denial or delay (Const. of Mo., Art. II, Sec. 10)?

The right of free access to the courts is fundamental in our theory of government. In *Straus* v. *Victor Talking Mach. Co.*, 297 Fed. 791, 798, it is said: "Free access to the courts must neither be denied nor penalized."

In *Missouri Pacific R. Co.* v. *Larabee*, 234 U. S. 459, the right of a state to impose attorneys' fees upon the losing party in an appeal to the Supreme Court of the United States was denied on the ground that if that were permitted, "the right to freely seek access to the Supreme Court of the United States would cease to exist."

In *Wetmore* v. *Mellinger*, 64 Iowa, 741, it is said:

> The courts are open and free to all who have grievances and seek remedies therefor, and there should be no restraint upon a suitor, through fear of liability resulting from failure in his action, which would keep him from the courts.

The imposition of the Trust Company's expenses incurred following the final decree of June, 1910, can only be justified upon the assumption that the Southern Company, instead of resisting the Trust Company's appeal, should have filed a confession of error, and permitted a perfunctory reversal of the decree, and, further, that it should have refrained from prosecuting an appeal from this Court to the Supreme Court. The assumption, of course, is absurd. The Southern Company would have betrayed its stockholders, and its counsel would have been traitors to their client, if they had taken any other course than the one they pursued.

Not only is there glaring injustice, we respectfully submit, in imposing upon the Southern Company any of the expenses of the Trust Company following the final decree, but such a ruling is particularly obnoxious to the extent that it penalizes the Southern Company for what this Court has characterized

as the mistakes of opposing counsel; and this we now proceed to point out.

After the Trust Company's appeal had been argued in this Court, in May, 1911, certain stockholders of the Trust Company were permitted to intervene, on the ground that the Trust Company's attorneys, Messrs. Gates & English, had made a mistake in assigning as error the *inclusion* in the decree of the finding that the Southern Company did not assume the debt of the Belt Company, instead of challenging the correctness of the finding itself.

It should be said, in all fairness to Messrs. Gates & English, that there were at that time several actions pending in the state court at Kansas City, brought by the Trust Company against the Southern Company, for this same indebtedness. They preferred to litigate the liability issue in the state courts, where they felt that their chances of success were better than in the federal courts. As above stated, the *Boyd* case (228 U. S. 482) had not then been decided. They relied upon the statement contained in the opinion of this Court, where, referring to the case now under consideration and to the state court cases, it was said (171 Fed. 42, 50): "The liability of the Southern Company to pay the debt, which the Trust Company alleges in the actions at law it has promised to pay, *is not an issue and cannot be determined in the suit in equity*" (this suit). This, if literally true, would fairly justify their position. Hence, their effort to exclude that issue from this case and try it in the cases in the state court. This Court held that their position was a mistaken one (201 Fed. 818), but that it is not material here.

The result of the intervention of the stockholders was that a sharp clash occurred between their representative, Mr. Mecartney, and the regular counsel for the Trust Company. The former prevailed in his contentions, and the liability issue was raised in this Court and decided adversely to the Southern Company. The Trust Company not only paid Messrs. Gates & English their fees for services rendered on the appeal (Rec. 71-73), but it was required to pay Mr. Mecartney $47,000.00 (Rec. 73) by the judgment of this Court in *Mecartney* v. *Guardian Trust Co.*, 280 Fed. 64. His judgment was, by this Court, put upon the ground that he had per-

formed a service which should have been performed by the regular counsel.

We find, therefore, an unnecessary duplication of counsel, with charges and counter-charges of neglect and incompetency, resulting in the Trust Company being required to pay a much larger bill for legal services than would otherwise have been necessary. Other counsel fees in substantial amounts were also paid by the Trust Company upon the appeal to this Court.

Upon what theory of the law, English or American, should the Southern Company be required to pay for this unnecessary duplication of counsel? Upon what theory of law or morals is the Southern Company called upon to underwrite the legal ability or capacity of opposing counsel? If there is a quarrel among opposing counsel, resulting in an unnecessary duplication of services and charges, why should the Southern Company be required to pay the fees of both? Even the English practice would not require this. It seems unnecessary to argue further so plain and obvious a proposition.

IV.

It is contrary to both reason and authority to base an allowance of counsel fees in this case upon the assumption that the Trust Company uncovered and brought into the constructive possession of the court a fund from which creditors of the Belt Company were entitled to be paid.

This Court seeks to justify the imposition of costs as between solicitor and client upon the assumption that "the Trust Company in the course of litigation uncovered and brought into the constructive possession of the court a fund from which creditors of the Belt Company were entitled to be paid." This, we contend, is clearly erroneous, and the error is susceptible of plain demonstration.

We insist that no fund was uncovered and brought into the constructive possession of the court, within the meaning of the rule relied upon; and, furthermore, we insist that the case is governed by established principles which prohibit

the allowance of counsel fees in the circumstances shown in this case. Before coming to a discussion of these questions, we call attention to the following considerations:

(a) It is true that this Court, in the course of its argument, for the purpose of pointing out the equitable rights of the Trust Company, said that the property of the Belt Company was a trust fund. It meant no more than that the right of a creditor to resort to it for the satisfaction of his debt was superior to the right of a stockholder. This is the view taken by the Supreme Court, which said:

> The Circuit Court of Appeals decided that the Guardian Trust Company . : . was entitled to charge the appellant for the Belt Company's debt, because the reorganization scheme, adopted upon the foreclosure of a mortgage of the Belt Company's property and a purchase by the appellant, left the unsecured creditors inadequately provided for, while it made a considerable provision for the stockholders in the Belt Road.

While the Supreme Court adopted and applied this view, it did not hold that the property of the Belt Company was a trust fund; much less did it hold that the property of the Belt Company had been uncovered for the benefit of creditors and placed in the constructive possession of the Court.

(b) The decree of this Court, which the Supreme Court affirmed, did not order the distribution of any fund to creditors. It merely awarded a personal judgment against the Southern Company for the amount of the Belt Company's debt, with the return of the collateral upon payment of the debt, and with a sale of the collateral upon a failure to pay the debt. It was a personal judgment, which has long since been paid in full, in favor of the Trust Company, and this judgment did not inure to the benefit of any one else.

(c) At no time did the Trust Company assert any claim except its own. There can be no pretense that it was acting for the benefit of any creditor. Its claim that the Southern Company was liable for the debt of the Belt Company is stated in its answer to the amended intervening petition of the Southern Company (S. C. Rec. 311), and is asserted solely in

its own behalf. It is in the nature of a legal claim, as distinguished from an action in equity. The suits in state courts upon the same cause of action (S. C. Rec. 502) were actions at law, triable by jury (R. S. Mo. 1919, Sec. 1398).

(d) Not only was the property of the Belt Company not a trust fund, in any substantial sense, but it was not in the possession of any court at the time the Trust Company asserted its claim in 1905, nor has it been in the possession of any court since that time. The property of the Belt Company, as appears from the Trust Company's answer (S. C. Rec. 295) was sold in November, 1901, at foreclosure sale, and purchased by the Southern Company, which ever since that time has had exclusive possession thereof. Manifestly, the stock of the Southern Company, which was issued in exchange for the stock of the Belt Company in the reorganization (if that be regarded as a "fund"), has never been in the possession of any court.

The Court's ruling is in direct conflict with the applicable authorities.

The Court conceives that its decision with respect to the discovery and administration of a fund is supported by *Trustees* v. *Greenough*, 105 U. S. 527, and decisions of that character. Those cases hold, in general, that where one litigant, at his own expense, has either created, preserved or protected a fund, and others were entitled to claim, and did claim, the results of his labors, it was not fair that the persons who have taken the risk and cost and expense of the litigation should bear all the costs, but those that shared in the fruits should bear their full pro rata share. The extent of the rule was that where meritorious results were actually achieved, those who, by inaction, sought to await the result and escape all expense if the case be lost, but if successful, to share the actual benefits by receiving their portion of this success, should not be allowed to do so without contributing their share of the expense (*Buell Case*, 201 Fed. 762, 768).

The total inapplicability of this rule to the case at bar is manifest, for several reasons, which we now point out:

(a) In this case the Court did not take charge of, administer, preserve or distribute any fund. It awarded a money judgment in favor of the Trust Company and against the Southern Company, which has long since been paid in full. The rule of the *Greenough* case, which permits the making of an allowance to counsel, does not apply. It would not have applied, even though a fund had been uncovered and administered, since the result of the litigation was a personal judgment, and not the distribution of a fund.

This rule is stated clearly and emphatically by the Supreme Court of Missouri in *Johnson* v. *United Rys. Co.*, 247 Mo. 326, 152 S. W. 362. There, an action in equity was brought in behalf of complainant and other creditors to subject to the payment of their debts certain property which the debtor had transferred in fraud of creditors. There was a money judgment for complainant, and his motion for an allowance of attorney's fees was denied. The court held that the rule of the *Greenough* case had no application, saying:

> With cases of that ilk eliminated, there is left to consider a doctrine of equity, viz., that a trust fund of right should bear the expenses of its own administration. According to that rule, it has been held that where a transaction has been ripped up or a conveyance set aside for fraud and an estate has been uncovered and recovered, which, in equity, belongs to creditors, and that estate is held in the hollow of the chancellor's hand to be administered and distributed, attorney's fees may be allowed as part of the trust administration. White *v.* University Land Company, 49 Mo. App. 450; Trustees *v.* Greenough, 105 U. S. 527, 26 L. Ed. 1157; Central Railroad, etc. *v.* Pettus *et al.*, 113 U. S. 116, 28 L. Ed. 915; Woodward *v.* Mastin, 106 Mo. loc. cit. 364, 365, 17 S. W. 308. Agreeably thereto are an array of other cases industriously collated in Mr. Gilliam's brief *pro se*. But it seems to us their doctrine does not apply here. This because the power of a court of equity is flexible enough to measure out relief in cases of this kind by a general personal judgment, without segregating a fund in kind, and bringing its corpus into a court of equity for administration. Accordingly, here the judgment was a general money judgment against Railways Company. It stopped short at that point. It administered no fund.

> It took this form apparently by consent of the parties; at least, no one took exception to that feature. In such fix, the case falls within the doctrine of the general rule, viz., that in Missouri one litigant cannot be compelled to pay the attorneys' fees of another, either in equity or at law. Pickel *v.* Pickel, 147 S. W. 1059, not yet officially reported. It appears that Johnson contracted that Mr. Gilliam on top of a named percentage might have all attorney's fees the court allowed. That friendly turn added no virtue to movent's position. In that aspect it dealt with a bird (not in hand, but) in bush. We hold the motion well ruled.

This rule applies squarely to the case under consideration. Here, there was a general money judgment against the Southern Company. The decree stopped short at that point. It administered no fund. The case therefore falls within the doctrine of the general rule, in Federal Courts as well as in the State Courts of Missouri, that one litigant cannot be compelled to pay the attorney's fees of another, either in equity or at law.

(b) Even where a creditor sues in equity for the benefit of himself and all intervening creditors, and obtains a decree for complainant and such creditors, and the complainant and such creditors receive the full amount of their debts, with interest and taxable costs, the complainant is not entitled to an allowance for solicitor's fees out of the surplus otherwise payable to the debtor, after full payment of all debts and costs.

In this case, the only creditor was the Trust Company. It did not sue for the benefit of other creditors who might come in and assert their claims. The Trust Company's debt became merged in a personal judgment, and that judgment with interest has been paid, and the taxable costs have been paid. Upon what theory of law is the Trust Company entitled to impose the burden of counsel fees upon the surplus of the trust fund (assuming there was a trust fund), belonging to the Southern Company?

The authorities deny the validity of a claim of this nature. One such authority is *Huff* v. *Bidwell*, from the Fifth Circuit, 195 Fed. 430, where it is held:

> Where a judgment lien creditor sues in equity for the benefit of himself and all intervening creditors, and

obtains decree for complainant and such creditors, and the defendant's property condemned and sold to satisfy debts exceeds the amount of debts and interest and costs, the complainant is not entitled to an allowance from his solicitor's fees out of the surplus otherwise payable to the debtor after full payment of all the debts and costs.

The court said (p. 431):

> In creditors' suits, the underlying principle upon which those who do not appear as plaintiffs are charged with a proportionate part of the solicitors' fees is that the plaintiffs represented, and were suing for, the others; and this agency is generally shown by the appearance of the other creditors in court propounding their claims and claiming to share in the result of the suit. Lamar *v.* Hall & Wilberly, 129 Fed. 79, 83, 63 C. C. A. 521; Farmers' Loan & Trust Company *v.* Green, 79 Fed. 222, 24 C. C. A. 506; Hand *v.* Railroad Company, 21 S. C. 162. But the plaintiff in this case in no sense represented Huff, the defendant. The suit was not brought for his benefit. There was no just reason for seizing more of his property than would pay his debts, principal and interest, and the costs of suit. The property having been sold for a sum in excess, the proceeds necessarily came into court; but it was never the purpose of the suit to accomplish more than the collection of the debts and costs. *If no creditors had intervened, if the suit had been brought by the plaintiffs to enforce and collect their judgments only, is there any known principle upon which Huff could have been made responsible for the plaintiffs' solicitor's fees?* The intervening of the creditors may in such cases oblige them to contribute to the payment of the fee; but such interventions impose no obligation on the defendant who is sued. On principle, it seems to us that this fee cannot be added to Huff's indebtedness.

The sentence which we have italicized has accurate and precise application to this case. Here, no other creditors did intervene. The Trust Company sought to enforce and collect its claim only. Is there, therefore, any known principle upon which the Southern Company can be made responsible for the Trust Company's solicitors' fees?

In 20 Cyc. 825, the rule is thus stated:

> Upon a conveyance by a debtor being set aside as fraudulent, at the suit of a creditor, and a sale of the property being ordered, the creditor's attorney may be allowed a fee out of the proceeds; but such fee should be paid out of that part applicable to the demands of creditors, and not out of such balance as may come to the debtor after the liquidation of the debts proven and passed.

The foregoing quotation is cited and followed in *Pickel* v. *Pickel,* 147 S. W. 1059 (Supreme Court of Missouri), in a case where, at the suit of a wife, a conveyance by a husband was set aside as fraudulent as to her rights of maintenance.

In *Wagener* v. *Mars,* 27 S. C. 97, 2 S. E. 844, 846, it is held:

> Upon conveyances by a debtor being set aside as fraudulent at the suit of a creditor, and a sale of the property being ordered, the creditor's attorney may be allowed a fee out of the proceeds, but the fee should be paid out of that part applicable to the demands of creditors, and not out of such balance as may come to the debtor after the liquidation of the debts proven and passed.

The court said:

> As to the fee. This is a creditor's bill, or in its nature, and the proceeds of the sale are directed by the decree to be held subject to the further order of the court, the master in the mean time to report incumbrances and liens, etc. We think, in so far as the proceeds may be applied to the creditors who may come in and share the result of the plaintiffs' action, a fee for respondent's counsel may be paid therefrom. But, should the lands sell for more than enough to pay said claims, the balance, which would belong to the defendants, should not be diminished by any portion of said fee. In other words, the fee should be deducted from the amount of proceeds applied to the creditor's claims. It may be that there was no doubt below that it would take the entire proceeds of the prospective sale to meet the demands, and therefore the order made was not objectionable. With that understanding, this portion of the decree is affirmed also. But, should it turn out

otherwise, then this portion of the decree should be enforced, as above suggested.

In *Miller* v. *Kehoe,* 107 Cal. 340, it is held:

> Counsel fees may be allowed in equity in an action for the preservation or distribution of a fund where all the parties have a common interest; but a plaintiff who brings suit for himself and others interested with him cannot recover counsel fees against a defendant who denies the right of each and all of the plaintiffs, and sets up in himself an adverse and independent title to the thing in litigation.

The court said (p. 343):

> We think, however, that the court below erred in decreeing that attorneys' fees should be paid to the plaintiffs or to the assignee in insolvency out of the gross proceeds of the sale of the property. That would be to make the defendant Margaret pay the attorneys' fees of plaintiffs out of the "residue" coming to her; and for this there is no warrant of law. . . . Counsel for respondents contend that this part of the decree can be maintained under the rule, sometimes applied in equity, that where it is necessary to bring an action for the preservation or distribution of a fund, and the action is brought by one beneficiary for the benefit of himself and all the other beneficiaries, the plaintiff may have a reasonable counsel fee out of the fund. This is merely compelling all the persons for whose benefit the action is brought to bear their share of the expenses of the suit, and is equitable and just. But evidently the rule applies only to a case where all the parties have a common interest. It clearly does not allow a plaintiff who brings suit for himself and others interested with him to recover counsel fees against a defendant who denies the right of any and all the beneficiaries, and sets up in himself an independent and hostile right or title to the thing in litigation. In the latter case the plaintiff would be no more entitled to recover counsel fees from the defendant than he would be in an action of debt or ejectment.

The reason for this rule is that the services of counsel are rendered, not in behalf of any party or parties, but with respect to the property itself. It is therefore proper that

compensation for services of counsel should be made a direct charge upon the fund which is to be distributed to creditors, and paid prior to the distribution. The expenses of counsel come out of the fund and are always deducted from the fund before distribution is made. The extreme limit of a creditor's recovery is the amount of his debt, with interest, diminished by his pro rata contribution to the allowance to counsel. This rule has been expressed by the Supreme Court in *Meddaugh v. Wilson*, 151 U. S. 333, where the court said:

> Their services in this respect not being to any party or parties, *but in respect to the property itself*, and to secure its proper application among all parties interested, it is clearly in accordance with settled rules of equity jurisprudence, as well as with the practice in bankruptcy proceedings, that compensation for their services, including the pay of their counsel, should be made a direct charge upon the property, and a charge prior in right to the claims of creditors or stockholders. "It is a general principle that a trust estate must bear the expenses of its administration." International Imp. Fund Trustees *v.* Greenough, 105 U. S. 527, 532.

If there had been in this case a fund in the possession of the court for administration and distribution (we insist there was not), the utmost limit of recovery by the Trust Company and other creditors (assuming there were others, although, in fact, there were not) would be the full amount of their respective claims, with interest, diminished by their proper proportion of any allowance made for counsel fees. The amount distributable to the Trust Company, plus its pro rata share of the allowance of counsel fees, might equal, but could not exceed, the amount of its claim, with interest. In other words, the Trust Company would pay its proportion of counsel fees out of its own distributive share; and the same would be true of other participating creditors.

The result is the same, in principle, where, as here, the Trust Company was the only creditor. The amount awarded it in this case was the full amount of its claim, with interest, and, accordingly, on both principle and authority, the Trust Company should pay its own counsel fees out of the proceeds of its judgment.

Certainly, there is no equity in requiring the Southern Company to pay out of its share of the trust fund (assuming as before, that there was one), the expenses of the Trust Company's counsel, who rendered no service whatsoever for the Southern Company, and whose activities were wholly in conflict with its interest.

(c) Not only was the Trust Company awarded a money judgment, which has been paid, and not only does the Trust Company seek to impose its claim for counsel fees upon the part of the trust fund (if there was one) remaining after the only creditor in the action has been paid in full, but the fact remains that the Trust Company's effort in this litigation was solely made in its own behalf, and in an endeavor to protect its own selfish interest; and the rule applies that in such cases there can be no allowance of counsel fees. This rule is aptly illustrated in *Boothe* v. *Coal Co.*, 72 Wash. 679, where it is said:

> In an action by a stockholder on behalf of himself and others similarly situated, in which there is a favorable termination, the benefit of which goes to the corporation, plaintiff is entitled to recover a reasonable attorney's fee and necessary disbursements, but such allowance will not be made to a stockholder owning half of the stock, in a controversy with the owner of the other half, in which a receiver was appointed on the theory of a partnership, and no one but the plaintiff was benefited by the result of the suit.

The same rule was applied in *Attorney General* v. *North American Life Ins. Co.*, 91 N. Y. 57, where the court said (p. 62):

> The intervening parties are termed quasi trustees, charged with a duty to protect the general interest, but nothing could be further from the truth. As parties to the action they represented nobody but themselves, and owed no duty to anybody else. If their interests came in collision with those of other policy-holders they fought for their own, as they had a right to do. They came in as individuals to guard their own personal rights. No one in any manner authorized them to speak for or act for any person but themselves, and they can-

> not become volunteer trustees for those who never asked or requested their interference. They had no fund in their hands for the preservation of which they were responsible. Their sole effort and aim was to get as much of it for themselves as possible, and if, in that effort, others were benefited, they cannot claim to be trustees for such others so as to get still more of the fund for themselves.

In *Savage* v. *Sherman*, 87 N. Y. 285, it is said:

> We are not aware of any rule or principle whereby any of these parties are entitled to call upon others to pay counsel fees which they incur on their own behalf for the protection of their personal interests.

In *Pike* v. *Cincinnati R. Co.*, 179 Fed. 97, 103, the court said:

> The practice of compensating the trustee out of the fund for his service in the care of it has no application to a case where the trustee is simply subserving the interests of one of the parties in a contest for the possession of the fund.

Other decisions of a similar nature are referred to under a subsequent heading.

V.

We strenuously insist that a Federal Court has no power in a suit in equity to tax attorneys' fees incurred or expended by one of the parties as costs to be paid by his adversary.

We are now speaking of taxable costs, and do not refer to allowances, which, under recognized rules, may be made to trustees and receivers in mortgage foreclosures and to creditors who bring suit in behalf of themselves and other creditors and create a fund and cause it to be distributed in accordance with equitable principles, or instances of a similar nature. Our contention is that the English system of taxing costs as between solicitor and client has never obtained a foothold in this country. Our courts in repeated instances have set their faces sternly against it.

The English system of taxing costs is fundamentally different from our own system. There, attorneys' fees or solicitors' fees, which are fixed by law, are taxed in every case, whether at law or in equity. Attorneys' fees are included in every taxation of costs as between party and party. The taxation of costs as between solicitor and client permits a somewhat larger proportion of actual expenditures than is allowed in taxation as between party and party.

In modern practice, however, the English system of taxation as between solicitor and client "gives little more than a taxation as between party and party" (*Giles* v. *Randall*, 1 K. B. D. 290, 296).

In *Daniell's Chancery Pleading & Practice*, Vol. 2, 6th Am. Ed., star page 1376, note 1, it is said:

> The importance of this distinction (party and party, or solicitor and client) has been somewhat diminished by Cons. Ord. 40, 32.

The practice of the English courts in taxing costs as between solicitor and client is discussed in Appendix B, page 120, of our original brief. We content ourselves here with stating our reasons for the contention that the English doctrine has been repudiated *in toto* by the federal courts of this country. We will briefly trace the historical development of the subject of taxing attorneys' fees as costs from the beginning of our government down to date.

Early statutes and rules of court.

On August 8, 1791, "the Chief Justice, in answer to the motion of the Attorney General, made yesterday, informs him and the bar, that this court consider the practice of the courts of king's bench, and of chancery, in England, as affording outlines for the practice of this court; and that they will, from time to time, make such alterations therein as circumstances may render necessary" (*Rules and Orders of the Supreme Court of the United States*, 2 L. Ed.). This in 1822 was expanded into Equity Rule 33, and in 1842, into Equity Rule 90, which latter was dropped from the equity rules February 1, 1913.

This Court, in its opinion, apparently takes the view that the effect of these equity rules was to import into our practice the English doctrine of taxation of costs as between solicitor and client. We contend that this cannot be so, and proceed to state our reasons.

Congress, by Act of September 29, 1789, provided that the rates of fees in the circuit and district courts of the United States, in equity cases, should be in accordance with those allowed by the chancery court of the state. The Act of May 26, 1790, continued the Act of 1789 until the end of the succeeding session, and it was again continued by the Act of February 18, 1791, until the end of the next session. The Act of March 1, 1793, provided for the taxation in the circuit courts of the United States of such attorneys' fees and counsel fees "as are allowed in the Supreme or Superior Courts of the respective States." The Act was continued another year by the Act of February 25, 1795, and was again continued by the Act of March 31, 1796, for the term of two years, and from thence until the end of the next session of Congress thereafter (Report of Mr. Justice Nelson, 1 Blatchford C. C. 652).

Is it not entirely clear that Congress, in these enactments, was declaring its own policy with respect to the taxation of attorneys' fees as costs? It deliberately adopted the policy of applying the rules of the state court where the Federal Court was sitting, as the rules in its own court. If it had desired to adopt the English practice, in that behalf, it seems certain that it would have said so. At that period in the development of our judicial system, the extent to which the forms, precedents and practice of the mother county should be followed, was receiving the earnest attention of Congress. Its failure to adopt the English practice can only be regarded as an intentional repudiation of it in favor of its own rules.

Early decisions of the Supreme Court.

The first case in which there was presented to the Supreme Court the question of whether or not attorneys' fees might be taxed as costs, was *Arcambel* v. *Wiseman*, 3 Dall. 306, 1 L. Ed.

613, decided in 1796. In that case an allowance of $1,600 as counsel fees had been included as a part of the damages allowed by the circuit court, but the Supreme Court ordered the disallowance of this item, saying:

> We do not think that this charge ought to be allowed. The general practice of the United States is in opposition to it; and even if that practice were not strictly correct in principle, it is entitled to the respect of the court, until it is changed, or modified, by statute.

Then followed *The Apollon,* 9 Wheat. 362, decided in 1824, and *Canter* v. *Ins. Co.,* 3 Pet. 307, decided in 1830, in both of which the decision was rendered by Mr. Justice Storey, and in both counsel fees were allowed. Both cases, however, were explained, as we shall see later, as having been decided as they were because the Act of 1853 was not then in force. In *Day* v. *Woodworth,* 13 How. 363, decided in 1851, the court held that attorneys' fees could not be included in an award of exemplary damages.

Prior to the statute of 1853, the practice with respect to the taxation of attorneys' fees as costs may be said to have lacked uniformity; the general rule being that such costs were to be taxed in accordance with the varying practice in the state where the court was sitting. But this lack of uniformity is in itself conclusive evidence that the English system had not been adopted, for had that system been adopted, we would find uniformity, instead of uncertainty. The report of Mr. Justice Nelson, above referred to, was published in 1842, and disclosed not only the lack of uniformity in Federal Court practice, but the necessity for some uniform rule applicable to Federal courts wherever sitting.

The Act of 1853, and its construction by the Supreme Court.

The Act of 1853 was intended to meet this demand for uniformity. It provided that certain specified fees "and no others" shall be taxed and allowed to attorneys, solicitors, and proctors in the courts of the United States, and that on a final hearing in equity or admiralty, a docket fee of twenty dollars shall be taxed. This statute is in itself conclusive

evidence of the complete repudiation of the English practice, if it ever existed in this country. Our courts thereafter recognized it as once and for all settling the question of the taxation of costs, and limiting the taxation of attorneys' fees in the stipulated manner.

The effect of the statute was before the Supreme Court in 1869, in *The Baltimore*, 8 Wall. 377. The court there reviewed not only the prior legislation, referred to above, but the practice which had prevailed prior to the Act of 1853, pointing out the lack of uniformity. It held, in effect, that the Act was intended to standardize the practice in Federal courts; that while attorneys might charge their clients reasonably for their services, nothing could be taxed as costs against the opposite party, as an incident to the judgment, except the costs and fees prescribed and enumerated. It also held that *The Apollon*, 9 Wheat. 362, and *Canter* v. *Ins. Co.*, 3 Pet. 307, which were cited in the brief of the appellees, were inapplicable because decided before the Act of 1853. The court said (p. 392):

> Fees and costs, allowed to the officers therein named, are now regulated by the Act of the 26th of February, 1853, which provides, in its 1st section, that in lieu of the compensation now allowed by law to attorneys, solicitors, proctors, district attorneys, clerks, marshals, witnesses, jurors, commissioners and printers, the following and no other compensation shall be allowed.
>
> Attorneys, solicitors and proctors may charge their clients reasonably for their services, in addition to the taxable costs, but nothing can be taxed as cost against the opposite party, as an incident to the judgment, for their services, except the cost and fees therein described and enumerated. 10 Stat. at L. 161. They may tax a docket fee of $20 on a final hearing in admiralty, if the libelant recovers $50, but if he recovers less than $50, the docket fee of the proctor shall be but $10. The Canton, 21 Law. Rep. 473; The Liverpool Packet, 2 Sprague 37; The Connestoga, 2 Wall. Jr. 116.
>
> Reference is made to two cases where counsel fees were allowed, but it is a sufficient answer to those cases to say, that they were decided before the Act of Congress under consideration was passed. They do not, therefore, furnish the rule of decision in the case before us.

This decision would seem definitely to settle any question of the taxation of attorneys' fees as costs in excess of the amounts named in the statute. It is difficult to imagine the English doctrine as surviving after this decision.

But if there was any lingering doubt upon this subject, it was completely dispelled by the decision of the Supreme Court in *Oelrichs* v. *Williams*, 15 Wall. 211. This was an action on an injunction bond. The condition of the bond was that the obligor "should pay and satisfy all costs and damages that may accrue to the obligees, or either of them, by reason of said injunction, in case the same shall be denied." The question was squarely presented, therefore, as to whether counsel fees were included in the words "costs and damages." The injunction bond was in effect for a period of four years, eight months, sixteen days. Doubtless, it presented circumstances of great hardship. Both the master and the lower court allowed counsel fees, paid in securing a dissolution of the injunction, as a part of the costs and damages covered by the bond. This was reversed. The court, after referring to *Arcambel* v. *Wiseman*, *supra*, and other cases, said (p. 231):

> The point here in question has never been expressly decided by this court, but it is clearly within the reasoning of the case last referred to, and we think is substantially determined by that adjudication. In debt, covenant, and assumpsit, damages are recovered, but counsel fees are never included. So in equity cases, where there is no injunction bond, only the taxable costs are allowed to the complainants. The same rule is applied to the defendant, however unjust the litigation on the other side, and however large the *expensa litis* to which he may have been subjected. The parties in this respect are upon a footing of equality. There is no fixed standard by which the honorarium can be measured. Some counsel demand much more than others. More counsel may be employed than are necessary. When both client and counsel know that the fees are to be paid by the other party there is danger of abuse. A reference to a master, or an issue to a jury, might be necessary to ascertain the proper amount, and this grafted litigation might possibly be more animated and protracted than that in the original cause. It would be an office of some delicacy on the

> part of the court to scale down the charges, as might sometimes be necessary.
>
> We think the principle of disallowance rests on a solid foundation, and that *the opposite rule is forbidden by the analogies of the law and sound public policy.*

This comprehensive ruling should be accepted as completely settling and disposing of the question of the taxation of counsel fees, as costs, in this country. Such costs may not be taxed in equity cases, even where the litigation is unjust, on one side or the other, and however large the expense may be. The reasons are given. The parties stand upon a footing of equality. There is no fixed standard, in this country, by which counsel fees can be determined, as there is in England. Some counsel demand much more than others, and more counsel may be employed than are necessary. There is great danger of abuse if it be known in advance that fees, unregulated by law, are to be paid by the other party. Additional litigation would be necessary to determine the fees to be taxed. Counsel fees do not come within the designation of "costs," nor of "damages." Their disallowance rests on a solid foundation, and the opposite rule is forbidden by sound public policy as well as by the analogies of the law.

The Supreme Court, in subsequent cases, has assumed, without further re-examination of the question, that this decision has settled the law in this country. In *Tullock* v. *Mulvane*, 184 U. S. 497, the action was upon an injunction bond, which, as before, was conditioned to pay to defendant "all costs and damages." It was again insisted that attorneys' fees were properly allowed as an item of cost or damage upon the bond, and again denied. The court said (p. 511):

> . . . it remains only to consider whether the attorneys' fees were properly allowed by the court below as an element of damages on the bond. That they were not *is settled.*

The court then refers to *Oelrichs* v. *Williams, supra,* and concludes with the statement:

> It follows from what we have stated that there was error committed in allowing the recovery of attorneys' fees as an element of damage upon the bond in question.

The question next came before the Supreme Court in *Missouri, K. & T. R. Co.* v. *Elliott,* 184 U. S. 530, and was disposed of briefly in the following statement:

> Having thus disposed of the question of jurisdiction, we come to the merits of the case. It suffices to say, for the reasons given in the opinion in Tullock *v.* Mulvane, before referred to, 184 U. S. 497, that there was error committed by the Kansas City court of appeals in affirming the action of the trial court in allowing, in the judgment by it rendered, attorneys' fees as an element of damage upon the injunction bond contrary to the controlling rule on this subject enunciated by this court, by which the courts of the United States are governed in requiring the execution of such instruments.

This Court, in its opinion in this case, after referring to some of the cases above cited, among them, *Arcambel* v. *Wiseman, The Baltimore, Oelrichs* v. *Williams,* states that "such refusals (to tax attorneys' fees as costs) were not based upon any lack of power in the court, but because it was not deemed wise policy to allow attorney's fees to be taxed as costs in ordinary equity cases."

We respectfully submit, however, that it was a lack of "power" to impose attorneys' fees as costs which impelled the Supreme Court to decide as it did This is made entirely plain in *Missouri P. R. Co.* v. *Larabee,* 234 U. S. 459, where the question arose over the imposition of attorneys' fees by a state court in respect of an appeal prosecuted to the Supreme Court of the United States. The question is there stated by the court (p. 468):

> First. The question of the *power* of the court to make the allowance for professional services rendered in this court on the former writ of error.

It will be noted that the court was here discussing the *power* to make the allowance, and not the equitable principles which control some allowance which it has the power to make. The court held against the existence of the power, as follows:

> There can be no doubt that, tested by the general principles of law controlling in this court, by the *stat-*

utes of the United States relating to the subject, or the rules of this court concerning the same, the award for the attorneys' fees in question was *absolutely unwarranted.* We do not stop to review and expound the settled line of authority demonstrating this result because it would be wholly superfluous to do so, as the principles have been so long the settled rule of conduct in this court, and are so elementary as to require not even a reference to the cases. Some of the cases, nevertheless, we cite: Arcambel *v.* Wiseman, 3 Dall. 306; Day *v.* Woodworth, 13 How. 363, 372, Oelrichs *v.* Spain (Oelrichs *v.* Williams), 15 Wall. 211, 230, 231; Tullock *v.* Mulvane, 184 U. S. 497, 511 *et seq.*

It will be noted that the cases cited above are the same cases to which we have referred heretofore. They are referred to in the opinion of the Supreme Court as establishing a settled line of authority demonstrating the lack of *power* to tax counsel fees as costs. The prior interpretation of the Act of 1853 is reaffirmed. "It would be wholly superfluous," says the court, "to review and expound the settled line of authority . . . as the principles have been so long the settled rule of conduct in this court, and are so elementary as to require not even a reference to the cases."

In the recent case of *Sioux County* v. *National Surety Co.*, ... U. S. ..... (72 L. Ed. 240), to which reference has already been made, it is held that the term "costs," as used in the Act of 1853, does not include attorneys' fees.

Decisions of the Courts of Appeal.

The federal courts of appeals have, without exception, followed the statute of 1853, and the rule established by the Supreme Court of the United States in the foregoing cases, that, in the absence of authorizing statute, attorneys' fees in excess of $20 may not be taxed as costs as between solicitor and client, to be paid by one of the parties to the suit.

In *McIntosh* v. *Ward,* 159 Fed. 66, the Court of Appeals of the Seventh Circuit held that attorneys' fees could not be taxed as costs in a partnership accounting case. In its opin-

ion the court said, in reference to the allowable items of expense:

> Such allowances were of statutory origin. Our statute of 1853 . . . provides what shall, as costs, "be included in and form a portion of a judgment or decree against the losing party." . . . In our opinion the discretion of a court of equity does not authorize it to require one party . . . to pay to the other, under the name of costs, items paid from the fund for services and expenses in administering a suit properly in court, nor any other items not within the fee bill act.

Fraser v. *Cole,* 214 Fed. 556, was a suit by a legatee to enforce his claim against an executor and reach real estate fraudulently conveyed by her. The district court added to the decree an allowance of $1,000 solicitor's fees. The Court of Appeals for the Seventh Circuit said:

> No law of Illinois warranted the increase of Grace Fraser's indebtedness by such an addition . . . . Nor can equity in a suit upon a creditor's bill or a vendor's lien bill enlarge the defendant's debt in that way.

Leary v. *United States,* 257 Fed. 246, was a fraud case in which the successful party sought to have his attorneys' fees taxed against the losing party. The Court of Appeals for the Fourth Circuit said:

> The costs that can be taxed against the losing party . . . are little more than nominal, and the winner is therefore out of pocket for the fees of his counsel. If this be unjust to the one found to be in the right, it is because the law gives him only the amount of his recovery and the scanty sum allowed as taxable costs.

In *Motion Picture Patents Company* v. *Steiner,* 201 Fed. 63, the district court allowed an attorney's fee of $150.00 in each of two cases because of the vexatious conduct of plaintiff's counsel in the litigation. The Court of Appeals for the Second Circuit held that an attorney might be compelled to pay certain costs for vexatious conduct by virtue of Section 982 of the statutes, but that the costs could not be taxed against the client. If this Court be correct in its conclusions in this case, then the court in the *Steiner* case could have

taxed those costs under its equity powers. The two cases are in direct conflict.

In *Marks* v. *Leo Feist,* 8 Fed. (2d) 460, attorneys' fees were taxed as costs in a copyright case. The Court of Appeals for the Second Circuit held that while such fees were taxable under the copyright law:

> The general rule, which is subject to some exceptions, of course, is that each party to a litigation must pay his own counsel fees, no matter how unjust the litigation may have been, or how great may have been the *expensa litis* (citing the Arcambel and Oelrichs cases).

We respectfully contend that the decision of this Court is contrary to the statute, contrary to the decisions of the Supreme Court, and contrary to the decisions of federal courts of appeal in other circuits.

VI.

The Trust Company is not entitled to the taxation of costs as between solicitor and client with respect to the claim asserted against it as trustee in the Union Terminal mortgage.

As the Court has given what we regard as undue prominence to this item, which bore rather a minor part in the controversy, we desire to set forth the nature of the claim urged against the Trust Company, the defense interposed by the Trust Company, the findings of the master thereon, and the legal consequences following that finding, all of which, we insist, demonstrate that the Trust Company is not entitled to the taxation of costs as between solicitor and client.

The amended intervening petition of the Southern Company was filed pursuant to the following stipulation (S. C. Rec. 267):

> It is agreed between the parties to the intervening petition of the Kansas City Southern Railway Company that it may file its amended intervening petition setting up, in addition to the matters now contained in its intervening petition on file, its claim against the

Guardian Trust Company for alleged breach of trust as trustee in the mortgage made by the Union Terminal Railroad Company alleged to be accruing to it as the owner of all the bonds issued by the Union Terminal Railroad Company; and the Guardian Trust Company consents that the issues so made shall be referred to Shannon C. Douglass, Special Master and waives any objection it might make to said intervening petition on the ground of multifariousness or other formal matters; and the Guardian Trust Company further agrees to answer the said intervening petition within fifteen days from filing petition.

In paragraph 13 of the amended intervening petition (S. C. Rec. 288) it is alleged that the Union Terminal Railroad Company executed its mortgage to the Trust Company and another, as trustees, to secure bonds in the sum of $2,000,000; that at that time, the Union Company had not constructed its railroad, and the purpose of the issue of bonds, as the Trust Company well knew, was to provide funds with which to construct it, and it then became the duty of the Trust Company, "under the express terms of said mortgage, as well as by law", to see that as the bonds of the Union Company were sold, the proceeds thereof were used in the construction, completion and equipment of the railroad of the Union Company; but the Trust Company, unmindful of its duties, did from time to time sell said bonds to innocent purchasers for value and did unlawfully and improperly divert the said proceeds of said sales from the purposes for which they were intended, and did unlawfully and improperly use the said proceeds to diminish from time to time the alleged indebtedness from the Belt Company to it; and that the Trust Company, after the completion and equipment of the Union Company, did sell and put afloat certain bonds of the Union Company, when there was no occasion or necessity therefor; and the intervener, as the owner of all the outstanding bonds of the Union Company, was damaged by the acts and conduct of the Trust Company in the sum of $773,246.00.

The Trust Company, in its answer (S. C. Rec. 307) denied "that either by law or by the express terms of said mortgage it was the duty of respondent to see that as said bonds

were sold, the proceeds thereof should be used in the construction, completion and equipment of said railroad. On the contrary, respondent says that there was no such duty imposed either by the terms of said mortgage or by law."

The Trust Company then pleaded the five-year statute of limitation, and also the ten-year statute of limitation of the State of Missouri, and also pleaded laches.

The master (S. C. Rec. 876), after quoting the provisions of the mortgage, said:

> The plain provisions of the mortgage would seem to be explicit in relieving the trustees from the duty of inquiring into the use the railroad company intended to make of the bonds.

The master then proceeded to inquire whether such duty arose by implication of law. His conclusion was that "in as much as the provisions of the mortgage are explicit as to the requirements made of the trustees, it would seem to be clear that there can be no implied duties, which are inconsistent with the express covenants."

The master held that "the real cause of intervenor's action is simply a breach of duty on the part of the Trust Company, as trustee, in delivering the bonds of the mortgagor" (S. C. Rec. 880), and, accordingly, held that the five-year statute of limitation applied, and barred the action, saying (S. C. Rec. 883):

> . . . if the action of the Trust Company, in buying Union bonds from the Belt, constituted a breach of duty, on its part as trustee, it would follow that such breach was barred by the five year statutory limitation.

The master also sustained the defense of laches.

There are several considerations which, we believe, effectively dispose of the Trust Company's contention that any extraordinary allowance should be made to it on account of this claim.

(a) The claim against the Trust Company was filed by stipulation, as above set forth. It was in the nature of an action at law, as the master held (S. C. Rec. 880)—"simply

a breach of duty on the part of the Trust Company, as trustee, in delivering the bonds of the mortgagor". The Trust Company knew the nature of the action contemplated by the stipulation. Both parties knew that without the stipulation the claim could not be injected into the case. The Trust Company voluntarily agreed to litigate the claim in this action. The rule of *volenti non fit injuria* applies.

(b) As pointed out in our original brief (pp. 86-97), the Trust Company, at the time the claim was asserted by stipulation against it in 1905, had long ceased to be a trustee, and had long since ceased to have any trust property in its custody or control. It occupied the position of an ordinary litigant, seeking to shield itself from personal responsibility. The rule of indemnity, therefore, has no application.

(c) A complete answer to the Trust Company's claim for indemnity is found in the fact that the intervenor sought to impose upon the Trust Company the duties and obligations of a trustee with respect to the use of the Union Terminal bonds and their proceeds. It invoked the provisions of the mortgage itself, and the implications thought to arise from the terms of the mortgage, to establish this relationship, and so to make the Trust Company a trustee with respect thereto.

The Trust Company, although a trustee in the mortgage of the Union Company, in its answer denied the existence of any such trust relations, either by law or the express terms of the mortgage, and specifically denied that any duty rested upon it to see that, as said bonds were sold, the proceeds were used in the construction, completion and equipment of the railroad.

We have, therefore, on the part of the intervenor, an assertion of a trust relation with respect to the disposition of the bonds and their proceeds, and, on the part of the Trust Company, a denial that any such trust relationship existed. The master found this issue in favor of the Trust Company, and thereby it was established that no such trust relation existed, or ever had existed.

In other words, the intervenor sought to hold the Trust Company to the duties and obligations of a trustee, in respect

of the disposition of the bonds, or their proceeds, and failed to establish its claim in that behalf. The trustee relationship not being established, the authorities hold that there is no ground for a claim of indemnity. In *Lewin, Law of Trusts,* Twelfth Edition, page 1267, it is said:

> But if the plaintiffs take proceedings for the purpose of creating a fund, of which the defendants would be trustees for the plaintiffs if the plaintiffs succeeded, but the plaintiffs fail, the defendants are entitled as against the plaintiffs to costs only as between party and party.

In *Perry on Trusts,* 6th Ed., 1911, Sec. 896, the same rule is stated, in the following language:

> But where plaintiffs bring a bill against defendants for the purpose of creating a trust fund—as if they bring a bill to convert defendants into trustees under a constructive trust, or to compel the defendants to hold certain property in their hands in trust for the plaintiffs,—the defendants can have costs only as between party and party, if the plaintiffs fail; for the suit in such case turns out to be between strangers (citing Mohun *v.* Mohun, 1 Swanst. 20; Saunders *v.* Saunders, 3 Jr. (N. S.) 728).

Other authorities to the same effect are cited in our original brief (pp. 82-89).

VII.

The fact that complainants sought unsuccessfully to charge the Trust Company with the duties and obligations of a trustee, does not entitle it to the taxation of costs as beween solicitor and client.

The complainants charged that the Trust Company at all times dominated and controlled the Belt Company and the other corporations owned by it, and that by reason of such domination and control, the Trust Company assumed towards them the position and obligations of a trustee. In the Cambria bill, it is alleged that the Trust Company did

"assume the position of trustee and agent in managing and disposing of the bonds, stocks, funds, and other assets of said railroad companies, and auxiliary companies, in trust and for the use and benefit of the parties who might become concerned or interested therein; . . . including particularly creditors thereof and your orator" (S. C., Rec. 6). The Trust Company in its answer to the Cambria bill denied that it assumed the position or the obligations of a trustee in the following language (S. C., Rec. 42):

> Denies that in carrying out any of its plans and purposes, as alleged in the bill of complaint, the defendant assumed the position and duty of trustee and agent in managing and disposing of the bonds, stocks, funds and other assets of said railroad companies and auxiliary companies, in trust, and for the use and benefit of the parties who might become interested therein, as alleged in the bill of complaint; and denies that as a consequence of any such alleged position the relation of this defendant to any of such railroad companies and auxiliary companies in any wise became or was as principal bound and charged with the duty to indemnify or protect any such railroad or auxiliary company in any transaction against any loss, burden or liability, as alleged in the bill of complaint. Denies that it became the duty of the defendant, as to persons becoming interested in any of said railroad companies or auxiliary companies as creditors, to dispose of the stock, bonds, funds or other assets of any such railroad companies or auxiliary companies for the use and benefit of the persons interested therein, or who might become interested therein as creditors or otherwise, as alleged in the bill of complaint.

The issue was thus made by the pleadings. On the one hand, it was alleged that the Trust Company had assumed the position and relation of a constructive trustee, and, on the other hand, this was emphatically denied.

The master found that the Trust Company did not thus assume the position and obligation of a trustee, and his finding was approved by the lower court.

In these circumstances, the law is plain that the rule imposing attorneys' fees as costs in favor of the defendant has no application. The reason is that there is no trustee, no

cestui que trust, and no fund that is being handled or administered. The parties therefore occupy the position of ordinary litigants.

The English and American authorities cited in our original brief (pp. 81-86), which it is unnecessary to again quote, ought, we respectfully submit, to be accepted as conclusive.

VIII.

The litigation conducted by the Trust Company for its own benefit with respect to the collateral security, does not entitle it to the taxation of costs as between solicitor and client.

The Trust Company, on March 21, 1899, the day before the receivership of the Gulf Company, took from the Belt Company, or received from it, the collateral security in question, consisting of stocks, etc.—everything, in fact, which the Belt Company had at the time, which could be used as collateral. All of this the Trust Company proceeded to hold as security for the debt which it alleged the Belt Company owed to it. When this litigation came on, on September 6, 1900, receivers were appointed of all the assets of the Belt Company, of every kind and nature. Later a receiver was appointed for the Northern Townsite Company, whose stock was a part of the collateral in question; and a receiver was also appointed for the Central Improvement Company, whose stock was also a part of the same collateral. A receiver was also appointed for the Elevator Company. Thereafter the litigation concerned solely the question of debt or no debt as between the Belt Company and the Trust Company. As this should be determined, the collateral automatically would remain with the Trust Company or return to the Belt Company.

It cannot be contended that the Trust Company, in litigating the issue of debt or no debt, was acting in the interest of the pledgor. *It was acting solely in its own interest, to protect its own individual claim.* Nor was it seeking to protect the collateral security itself, for it needed no protection. It simply remained throughout the litigation as the pawn or

pledge to be awarded to the successful party when the litigation should end. The only dealing with the collateral during the entire litigation was the sale by the Trust Company, under orders of the Court, of certain Northern Connecting bonds and coupons, for which $40,001.25 was realized and held by the Trust Company in special deposit until the final decree, in which it was ordered to be applied upon the Trust Company's debt (S. C. Rec. 907). That part of the collateral which possessed value, consisting of the property of the Central Improvement Company and, in lesser degree, of the Northern Townsite Company, was being administered by the receivers of those properties, under the direction of the Court (S. C. Rec. 914).

The Trust Company performed no services whatsoever for the benefit of the pledgor, or for the benefit of the collateral itself. It was performing no duties as trustee. An effort was made to establish an implied trust, but it was not successful. The Trust Company's services were rendered, and its efforts expended, in protecting its own interest. In these circumstances, there is, we respectfully submit, no rule of law which permits the Trust Company, as trustee or pledgee, to impose its disbursements for counsel fees upon its adversary.

The authorities which amply sustain our position are quoted in our original brief (pp. 95-98), and it appears unnecessary to do more at this time than merely to refer to them.

IX.

Request for the certification of questions to the Supreme Court.

When all is said and done, this case merely involves the proper execution of the mandate of the Supreme Court (Rec. 465), issued upon the former appeal to that Court, reported in 240 U. S. 166. Did that mandate contemplate and require the taxation of costs as between solicitor and client, or as between party and party? When this Court decides these

questions, it is, after all, merely stating its own conclusion as to what the Supreme Court really intended should be done.

In the last analysis, it is for the Supreme Court to place its own interpretation upon its mandate. Its practice, as we have seen (*St. Louis, K. C. & C. R. Co.* v. *Wabash R. Co.*, 217 U. S. 247, 251), is to issue its writ of *certiorari* to review the action of the Circuit Court of Appeals in passing upon the proper execution of its mandate, where controversies arise in reference thereto. It seems probable that this case, which is now in its twenty-eighth year, will not be finally settled until the Supreme Court has placed its authoritative construction upon its mandate. Should this not be done now? Is there any virtue in waiting longer, with the resulting inconvenience and consumption of time and substance, before this final goal is reached? We can see none.

We respectfully request the Court, therefore, to grant this motion for a rehearing and, if it then entertains any doubt as to the merits of our contentions, to certify to the Supreme Court for its determination the vital and fundamental questions in this case, which, we suggest, might be phrased substantially as follows:

1. Did the Supreme Court, in its opinion and mandate in *The Kansas City Southern Railway Company* v. *Guardian Trust Company*, 240 U. S. 166, direct the District Court to tax the costs as between party and party?

2. Did the Supreme Court, in its opinion and mandate in said cause, direct the District Court to tax the costs, or any part thereof, as between solicitor and client?

The Supreme Court, under Sec. 239 of the Act of 1925, may then either give binding instructions on the questions certified, or may require that the entire record in the case be sent up for its consideration.

Respectfully submitted,

July 14, 1928.

FRANK H. MOORE,
CYRUS CRANE,
A. F. SMITH,
Solicitors for Appellee.

SAMUEL W. MOORE,
of Counsel.

I hereby certify that I am of counsel for the appellee; that, in my opinion, the foregoing motion for a rehearing is well founded, and that it is not made for the purpose of delay.

SAMUEL W. MOORE.

822 • • • • • • •

Memorandum of Clerk:

Appendix A to the foregoing petition for rehearing is omitted pursuant to praecipe, being Petition of The Kansas City Southern Railway Company for leave to introduce Testimony, etc., which appears on pages 33 to 44, inclusive, of this printed record.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Jul. 16, 1928.

(Order Denying Petition for Rehearing and Application for Certification of Questions to Supreme Court.)

September Term, 1928.

Thursday, October 18, 1928.

On Consideration of the petition for a rehearing and application for certification of questions to the Supreme Court of the United States, filed by counsel for appellee, it is now here ordered by this Court that said petition and application, be, and they are each hereby denied.

October 18, 1928.

(Motion of Appellee for Stay of Issuance of Mandate.)

Now on this day comes the appellee in the above entitled cause and shows to the Court that it is its intention to apply to the Supreme Court of the United States for a writ of certiorari in the above entitled cause for the certification and transfer of the records and proceedings in this Court to the Supreme Court of the United States. Such application will be made to the Supreme Court of the United States within a reasonable time, and in any event within the time allowed by statute.

823

Wherefore, appellee prays that the mandate in the above entitled cause shall not issue, but that the same may be stayed pending said application for a writ of certiorari.

F. H. MOORE
CYRUS CRANE
A. F. SMITH
Solicitors for Appellee.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Nov. 7, 1928.

(Order Staying Issuance of Mandate.)

September Term, 1928.

Friday, November 9, 1928.

On Consideration of the motion of appellee for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari, it is now here ordered by this Court that the issuance of the mandate herein, be, and the same is hereby, stayed until January 15, 1929, and if within said period there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed and proof by affidavit of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court be given, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

November 9, 1928.

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824 (Praecipe for Transcript for Supreme Court, U. S.)

To the Clerk of the said Court:

Confirming previous instructions, please prepare a transcript of the record in the above-entitled cause for filing with a petition for writ of certiorari in the Supreme Court of the United States, and include therein the following matters, viz:

1. Caption.

2. Printed transcript of the record filed in this cause upon appeal from the District Court of the United States for the Western District of Missouri, including the printed transcript of the record filed in the Supreme Court of the United States in cause No. 24092, entitled The Kansas City Southern Railway Company, appellant, versus Guardian Trust Company, et al., appellees (the said cause No. 24092 being cause No. 387, October Term, 1914, and No. 85, October Term, 1915, in said Supreme Court).

3. Order of Submission.

4. Decree of this Court.

5. Opinion of this Court.

6. Motion for rehearing, omitting Appendix A thereof, the latter being the "Petition of The Kansas City Southern Railway Company for Leave to Introduce Testimony", etc., since the said petition is printed in the transcript filed in this Court upon appeal from the said District Court, at pages 33 to 44 thereof.

7. Order denying motion for rehearing.

8. Motion for order staying issuance of mandate, and order entered thereon.

9. Any other orders, journal entries or proceedings in this Court, in their proper order.

10. Copy of this Praecipe.

FRANK H. MOORE
CYRUS CRANE
A. F. SMITH
Solicitors for The Kansas City Southern Railway Company.

825 Service of the foregoing praecipe for record, and receipt of a copy thereof, are hereby admitted and acknowledged this 14th day of November, 1928.

JUSTIN D. BOWERSOCK,
Solicitor for Guardian Trust Company, Henry C. Flower, Receiver.

(Endorsed): Filed in U. S. Circuit Court of Appeals, Nov. 15, 1928.

(Clerk's Certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Western District of Missouri as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, and full, true and complete copies of the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals, except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, prepared in accordance with the praecipe of counsel for appellee, in a certain cause

in said Circuit Court of Appeals wherein the Guardian Trust Company, Henry C. Flower, Receiver, is Appellant and The Kansas City Southern Railway Company was Appellee,
826 No. 7784, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that a printed copy of the record filed in the Supreme Court of the United States on the appeal in the case of The Kansas City Southern Railway Company, Appellant, vs. the Guardian Trust Company, et al., Appellees, No. 387 October Term, 1914, File No. 24,092, referred to in the stipulation of parties appearing on page 139 of the printed record to which this certificate is attached and which stipulation is approved by the Order of this Court appearing on Page A of this printed record, and which printed record so filed in the Supreme Court was submitted to this Court with this cause No. 7784, is now being transmitted herewith to the said Supreme Court.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this sixteenth day of November, A. D. 1928.

(Seal)

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 25, 1929

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 33,930. U. S. Circuit Court of Appeals, Eighth Circuit. Term No. 621. The Kansas City Southern Railway Company petitioner, vs. Guardian Trust Company, Henry C. Flower, receiver. Petition for writ of certiorari and exhibit thereo. Filed January 10th, 1929. File No. 33,930.